

United States

11

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC FREIGHTERS COMPANY,
a Corporation,

Appellant,

vs.

ST. PAUL FIRE and MARINE INSURANCE
COMPANY,

Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division

FILED

SEP 1 - 1939

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC FREIGHTERS COMPANY,
a Corporation,

Appellant,

vs.

ST. PAUL FIRE and MARINE INSURANCE
COMPANY,

Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Answer	8
Exhibit A—Average agreement.....	13
Answer to cross libel with interrogatories.....	30
Answers of Libelant to interrogatories.....	40
Exhibits to answers to interrogatories:	
A—Statement of general average, Schr.	
“Rosamond”	42
B—Letter dated November 12, 1920 to	
W. L. Comyn & Co. Inc. from Smith,	
Kirkpatrick & Co., Inc. and other	
correspondence	43
C—Statement of additional cargo and	
freight received thereon at San	
Francisco	68
D—Vouchers with relation to additional	
cargo and freight.....	69
Appeal:	
Assignment of errors.....	113
Bond on	119
Designation of contents of record on.....	132
Notice of	123
Order allowing	112
Petition to	112
Statement of points on.....	132
Assignment of errors.....	113

Index	Page
Bond on appeal.....	119
Citation	130
Clerk's certificate	129
Cross libel	16
Designation of contents of record on appeal.....	132
Exceptions of Libelant to answer.....	25
Exceptions of Libelant to cross libel.....	27
Exhibits for Libelant:	
2—Receipt dated March 22, 1921 for the amount of \$21,191.16.....	101
3—Receipt dated March 26, 1920 for the amount of \$24,486.04.....	102
Decree, final	109
Decree, interlocutory	99
Interrogatories annexed to cross libel.....	38
Libel	1
Names and addresses of attorneys of record.....	1
Notice of appeal.....	123
Notice of motion to strike portions of answer.....	26
Notice of motion to strike portions of cross libel	28
Order allowing appeal.....	112
Order extending time to docket appeal.....	128
Order for transmittal of exhibits.....	124
Order overruling exceptions to answer and cross libel and denying motions to strike.....	30

Index	Page
Order waiving printing of portion of exhibits.....	134
Petition for appeal.....	112
Praecipe for apostles on appeal.....	125
Report of Commissioner.....	103
Facts	104
Findings	105
Recommendation	107
Stipulation for omissions from apostles on appeal	127
Stipulation for submission of cause.....	70
Exhibits to stipulation for submission of cause:	
A—Charter party	74
B—Bills of lading.....	75
C—Average agreement	76
D—Statement of general average Schr. “Rosamond”	80
Stipulation for transmittal of exhibits.....	124
Statement of points upon appeal.....	132

NAMES AND ADDRESSES OF PROCTORS

PILLSBURY, MADISON & SUTRO, Esqrs.,

FELIX T. SMITH, Esq.,

Standard Oil Bldg.,

San Francisco, Calif.

Proctors for Appellant.

NATHAN H. FRANK, Esq.,

IRVING H. FRANK, Esq.,

311 California St.,

San Francisco, Calif.,

Proctors for Appellee.

In the Southern Division of the United States District Court for the Northern District of California. Division One.

No. 17274

ST. PAUL FIRE & MARINE INSURANCE CO.,
a Corporation,

Libelant,

vs.

PACIFIC FREIGHTERS COMPANY,
a Corporation,

Respondent.

To the Honorable Maurice T. Dooling, Judge of the Southern Division of the United States District Court for the Northern District of California. Division One:

THE LIBEL

of St. Paul Fire & Marine Insurance Co., a Corporation, against Pacific Freighters Company, a Corporation, in a cause of General Average, civil and maritime, alleges:

I.

That at all times hereinafter mentioned, St. Paul Fire & Marine Insurance Co., libelant above named, was, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and having an agency and doing business in the City and County of San Francisco, State of California.

II.

That at all times hereinafter mentioned, Pacific Freighters Company, respondent above named, was, and still is, a corporation, organized and existing under and by virtue of the laws of the State of California, having its principal place of business at the City and County of San Francisco, in said State, [1*] and at all of said times was the owner of the American Schooner "Rosamond."

III.

That at all times hereinafter mentioned, Smith, Kirkpatrick & Co., Inc., was, and still is, a corporation, organized under and by virtue of the laws of the State of New York.

IV.

That in the month of May, 1920, Messrs. Comyn, Mackall & Co. shipped on board the said schooner "Rosamond", at the port of Port Blakeley, Washington, a cargo of lumber to be by said vessel transported from said port of Port Blakeley, Washington, to Cape Town, South Africa, and said Comyn, Mackall & Co. then and there sold and transferred said cargo to said Smith, Kirkpatrick & Co., Inc., who at all of the times herein mentioned were the owners of the said cargo.

V.

That thereafter said vessel sailed from the said port of Port Blakeley, Washington, with said lum-

*Page numbering appearing at the foot of page of original certified Transcript of Record.

ber on board, for said port of Cape Town, South Africa, and while on said voyage experienced heavy gales, which caused said vessel to leak and to jettison her deck cargo; that in consequence thereof it became necessary for the safety of said vessel and the remaining cargo, for said vessel to square away for a port of distress, which she then and there did, and arrived at the port of San Francisco on or about the 16th day of May, 1920.

That on the arrival of said vessel at the port of San Francisco it became necessary to discharge the said cargo and place said vessel in dry dock for repairs. That upon said repairs being completed, the said cargo was re-loaded, and a new cargo taken on board to replace the deck load which had theretofore been jettisoned and lost. [2]

VI.

That under and by virtue of the contract of affreightment under which said cargo was being transported, the freight on said first cargo was prepaid and considered as earned on the completion of the loading thereof. That for the new cargo taken on board at the port of San Francisco as aforesaid, the said vessel received a new and additional freight amounting to the sum of Twenty-one Thousand One Hundred and Nineteen (\$21,119.00) Dollars.

VII.

That the said vessel thereupon proceeded upon her voyage and arrived at the port of Cape Town,

South Africa, on the day of 192 , and
safely delivered her said cargo.

VIII.

That the said vessel and the said cargo remaining on board thereof, after said jettison and at the time the said vessel changed her course for the port of distress, are liable to contribution in general average ratably for the cost and expense of putting into said port of distress and repairing said vessel, and such other expense incurred until she was again upon her voyage to the port of Cape Town, South Africa, and they are likewise entitled to be credited pro rata for the extra freight received by said vessel at said port of distress as the result of the substitution of the new cargo for that portion of the cargo which had been jettisoned.

IX.

That the valuation of said vessel, less the cost of repairs, is the sum of Forty-six Thousand Six Hundred Forty-two and 99/100 (\$46,642.99) Dollars.

X.

That the value of said cargo remaining on board after the jettison of the said deck load and at the time of the changing [3] of the course of said vessel for said port of distress, is the sum of Sixty-one Thousand Six Hundred and Sixty-two (61,662.00) Dollars.

XI.

That the expense of said deviation and cost of repairs aforesaid, is the sum of Eight Thousand Three Hundred Seventeen and $62/100$ (\$8,317.62) Dollars.

XII.

That the freight received by said vessel as a result of putting into said port of distress, is the sum of Twenty-one Thousand One Hundred and Nineteen (\$21,119.00) Dollars.

XIII.

That the amount of contribution in general average which said vessel should pay to said cargo is estimated at the sum of Seven Thousand Two Hundred and Twenty-four and $72/100$ (\$7,224.72).

XIV.

That heretofore, and before the commencement of this action, said Smith, Kirkpatrick & Co., Inc., for a good and valuable consideration, duly assigned to this libellant all of its (the said Smith, Kirkpatrick & Co., Inc.) right, title and interest in and to all of the moneys due or to become due to it from the said vessel, its owners, or other parties interested in said general average.

XV.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that a citation in due form of law according to the practice of this Honorable Court in cases [4] of admiralty and maritime jurisdiction, may issue against the said Pacific Freighters Company, a Coporation, and that it may be required to appear and answer on oath this libel and the matters therein contained, and that this Honorable Court will be pleased to decree to the libelant the payment of said general average contribution amounting to the sum of Seven Thousand Two Hundred and Twenty-four and 72/100 (\$7,224.72) Dollars, with interest and costs, and that said libelant may have such other and further relief as in law and justice it may be entitled to receive.

SAINT PAUL FIRE AND MARINE
INSURANCE COMPANY,

By M. C. HARRISON

NATHAN H. FRANK

IRVING H. FRANK

Proctors for Libelant,

1215 Merchants Exchange Bldg.,

San Francisco, Cal.

State of California,

City and County of San Francisco—ss.

M. C. Harrison, being first duly sworn, deposes and says: That he is the Agent for Saint Paul Fire and Marine Insurance Company, a Corporation, Libelant in the above entitled cause, and as such

Agent is authorized to make this verification for and on behalf of said libelant; that he has read the foregoing Libel, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and that as to those matters he believes it to be true.

M. C. HARRISON

Subscribed and sworn to before me this 13th day of July 1921.

[Seal]

C. M. TAYLER

Deputy Clerk United States District Court,
Northern District of California.

[Endorsed]: Filed Jul. 13, 1921. [5]

[Title of District Court and Cause.]

ANSWER.

The answer of Pacific Freighters Company, a corporation, respondent above named, to the libel of St. Paul Fire & Marine Insurance Co., a corporation, on file herein, admits, denies and alleges as follows:

I.

Admits the allegations of Articles I, II and III of said libel.

II.

Answering Article IV of said libel, respondent admits that in the month of May, 1920, Messrs.

Comyn, Mackall & Co. shipped on board the said schooner "Rosamond", at the port of Port Blakeley, Washington, a cargo of lumber to be by said vessel transported from said port of Port Blakeley, Washington, to Cape Town, South Africa, and said Comyn, Mackall & Co. then and there sold and transferred said cargo to said Smith, Kirkpatrick & Co., Inc., but denies that at any of the times therein mentioned subsequent to the sale hereinafter set forth said Smith, Kirkpatrick [6] & Co., Inc., were the owners of the said cargo, and in this behalf alleges: That a short time thereafter, the precise date being unknown to respondent, said Smith, Kirkpatrick & Co., Inc., sold and transferred said cargo to Small & Morgan, a copartnership doing business in the City of Cape Town, South Africa.

III.

Admits the allegations of Article V.

IV.

Answering Article VI, respondent admits that under and by virtue of the contract of affreightment under which said cargo was being transported, the freight on said first cargo was prepaid and considered as earned on the completion of the loading thereof, but denies that for the new cargo taken on board at the port of San Francisco as aforesaid, the said vessel received a new and additional freight amount to the sum of twenty-one thousand one hundred nineteen dollars (\$21,119.), or any sum in

excess of ten thousand dollars (\$10,000.); and in this behalf alleges that in order to proceed on said voyage and to earn said new and additional freight, respondent necessarily expended the sum of thirty thousand, one hundred ninety-six and 28/100 dollars (\$30,196.28) over and above the expense of deviation and cost of repairs mentioned in Article XI of said libel.

V.

Admits the allegations of Article VII.

VI.

Answering Article VIII admits that the said vessel and the said cargo remaining on board thereof, after said jettison and at the time the said vessel changed her course for the port of distress, are liable to contribution in general average ratably for the cost and expense of putting into said port of [7] distress and repairing said vessel, and such other expense incurred until she was again upon her voyage to the port of Cape Town, South Africa, but denies that they are likewise, or at all, entitled to be credited pro rata or otherwise for the extra freight, or any freight, received by said vessel at said port of distress, or at any place, as the result of the substitution of the new cargo, or any cargo, for that portion of the cargo which had been jettisoned, or any other cargo, or otherwise or at all.

VII.

Admits the allegations of Articles IX, X and XI.

VIII.

Answering Article XII, denies that the freight received by said vessel as a result of putting into said port of distress, is the sum of twenty-one thousand, one hundred nineteen dollars (\$21,119.), or any sum, and denies that the vessel received any freight as a result of putting into said port of distress.

IX.

Answering Article XIII, denies that the amount of contribution in general average which said vessel should pay to said cargo is estimated at the sum of seven thousand, two hundred twenty-four and $72/100$ dollars (\$7,224.72), or any sum, and denies that any sum or contribution in general average should be paid by said vessel to said cargo.

X.

Answering Article XIV, alleges that it has no information as to the matters therein contained, and for that reason demands strict proof thereof.

XI.

Answering Article XV, denies that all and singular the premises are true, or within the admiralty or maritime jurisdiction of the United States or of this Honorable Court. [8]

And for a further and separate defense, respondent alleges:

That on the 15th day of March, 1920, and upon the delivery of said cargo, said Small & Morgan

agreed in writing with respondent that all losses and expenses which by way of general average on account of said voyage should be made to appear to be due from them, should be stated by Geo. E. Billings Co., and would be paid by them to said Geo. E. Billings Co.; that a copy of said average agreement is hereunto annexed and marked Exhibit "A"; that in accordance with said agreement, said Geo. E. Billings Co. on May 14, 1921, stated said amounts and determined that there was due from said cargo the sum of four thousand, six hundred ninety-four and 22/100 dollars (\$4,694.22); that copies of said statement were thereupon delivered to said Smith, Kirkpatrick & Co., Inc., and libelant, and that neither said Smith, Kirkpatrick & Co., Inc., nor said libelant nor said Small & Morgan has ever notified said Geo. E. Billings Co., or respondent of any objection to said statement.

Wherefore, respondent prays that it be hence dismissed with its costs of suit.

PILLSBURY, MADISON & SUTRO

Proctors for Respondent. [9]

State of California,
City and County of San Francisco—ss.

R. H. Holmberg, being first duly sworn, deposes and says: That he is the Secretary of Pacific Freighters Company, a corporation, the respondent in the above entitled cause, and as such Secretary is authorized to make this verification for and on behalf of said respondent; that he has read the fore-

going Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and that as to those matters he believes it to be true.

R. H. HOLMBERG

Subscribed and sworn to before me this 26th day of August, 1921.

[Seal]

FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [10]

EXHIBIT "A".

Geo. E. Billings Co.
Average Adjusters and
Insurance Brokers
308-312 California Street
San Francisco
Represented by
Mather & Co.
Philadelphia, New York,
Boston and Seattle

AVERAGE AGREEMENT.

Whereas, the Scho. "Rosamond" whereof J. H. Brown was Master, having on board a cargo consisting principally of Lumber, sailed from Puget Sound on or about the 15th day of March, 1920, bound for Cape Town, and, in the due prosecution

of her said voyage, it is alleged that suffered heavy weather and put into San Francisco for the safety of the vessel and cargo.

And whereas, by reason of the occurrences of the voyage, certain losses and expenses have been incurred, and other losses and expenses may hereafter be incurred, which may be a charge (by way of General Average or otherwise) upon the said Vessel, her earnings as Freight, and her Cargo, or either of them, or upon specific interests;

Now, in consideration of the premises, we, the subscribers (Charterers, owners, shippers, or consignees, of the said Vessel, her earnings as Freight, or her Cargo; or agents or attorneys of charterers, owners, shippers, or consignees, of the interest described and set opposite our signatures), do hereby severally and respectively (but not jointly, or one for the other) covenant and agree (for ourselves personally, our principals, and for our and their respective successors, executors, and administrators), to and with The Pacific Freighters Co. and/or Geo. E. Billings Co. (as Trustees for all concerned), that all losses and expenses aforesaid which shall be made to appear to be due either from us, our principals, or from any firm of which we are or have been co-partners, whether as charterers, owners, shippers, consignees, or as subscribers hereof, shall be paid unto the said Geo. E. Billings Co. (as Trustees for all concerned) by us respectively according to the part or share in the said

Vessel, her earnings as freight, or her Cargo, which either belongs to us, belongs or is consigned to, or is for the account of, any person or persons for whom we are agents or attorneys, or with whom we are or have been co-partners, or in which we are or have been in any manner concerned, provided that such losses and expenses shall be stated and apportioned in accordance with the established usages and laws in similar cases, and such payment shall be made upon the completion of the statement of such losses and expenses, and upon due notice being given of the completion thereof.

And we do further bind ourselves to furnish promptly (upon request of said Adjusters) all such information and documents as they may require from us respectively to make said adjustment; and we warrant that the information furnished will be correct.

And should the value of services rendered in whole or in part to cargo be determined either by amicable settlement or by arbitration, we hereby severally agree to pay each our rateable proportion of any sum thus fixed or determined upon; and in the event of an action or suit being brought to recover for or determine the value of such services, we hereby severally agree to give bond therein in the same manner as if the person or persons by whom suit is brought had required such bond direct from us before surrendering the cargo; and we further severally agree to pay and fully satisfy any final decree that may be rendered.

This agreement may be executed in several parts of like tenor, the whole of which shall constitute but one agreement and shall have the same effect as if each of said parts were severally signed by us.

In Witness Whereof, we have to these presents set our hands, in the City of Cape Town Union of South Africa this 20th day of November in the year of our Lord, One Thousand Nine Hundred and Twenty.

Signatures—Small & Morgan.

No. of Packages and Description—11307 pcs. Douglas Fir and/or rough Clear Spruce.

Amount of Invoice—\$61661.71. Full particulars and original invoices will be sent you later (direct).

Where insured—Saint Paul Fire Marine Insurance Co. of Saint Paul, Minnesota. [11]

[Endorsed]: Admission of service. Filed Sep. 2, 1921. [12]

[Title of District Court and Cause.]

CROSS-LIBEL.

To the Honorable Maurice T. Dooling, Judge of the Southern Division of the United States District Court for the Northern District of California. Division One:

The cross-libel of Pacific Freighters Company, a corporation, against St. Paul Fire & Marine Insurance Co., a corporation, in a cause of general average, civil and maritime, alleges:

I.

That at all times hereinafter mentioned, St. Paul Fire & Marine Insurance Co., cross-respondent above named, was and still is a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and having an agency and doing business in the City and County of San Francisco, State of [13] California.

II.

That at all times hereinafter mentioned, Pacific Freighters Company, cross-libelant above named, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at the City and County of San Francisco, in said State, and at all of said times was the owner of the American Schooner "Rosamond."

III.

That at all times hereinafter mentioned, Smith, Kirkpatrick & Co., Inc., was, and still is, a corporation, organized under and by virtue of the laws of the State of New York.

IV.

That in the month of May, 1920, Messrs. Comyn, Mackall & Co. shipped on board the said schooner "Rosamond", at the port of Port Blakeley, Washington, a cargo of lumber to be by said vessel transported from said port of Port Blakeley,

Washington, to Cape Town, South Africa, and said Comyn, Mackall & Co. then and there sold and transferred said cargo to said Smith, Kirkpatrick & Co., Inc., and said Smith, Kirkpatrick & Co., Inc., then and there sold and transferred said cargo to Small & Morgan, a copartnership doing business at Cape Town, South Africa, who at all the times herein mentioned and subsequent thereto were the owners of said cargo.

V.

That thereafter said vessel sailed from the said port of Port Blakeley, Washington, with said lumber on board, for said port of Cape Town, South Africa, and while on said voyage experienced heavy gales, which caused said vessel to leak and to jettison her deck cargo; that in consequence thereof it [14] became necessary for the safety of said vessel and the remaining cargo, for said vessel to square away for a port of distress, which she then and there did, and arrived at the port of San Francisco on or about the 16th day of May, 1920.

That on the arrival of said vessel at the port of San Francisco it became necessary to discharge the said cargo and place said vessel in dry dock for repairs.

VI.

That under and by virtue of the contract of affreightment under which said cargo was being transported, the freight on said first cargo was prepaid and considered as earned on the completion of the loading thereof.

VII.

That the said vessel thereupon proceeded upon her voyage and arrived at the port of Cape Town, South Africa, on the 10th day of November, 1920, and safely delivered her said cargo.

VIII.

That the said vessel and the said cargo remaining on board thereof, after said jettison and at the time the said vessel changed her course for the port of distress, are liable to contribution in general average ratably for the cost and expense of putting into said port of distress and repairing said vessel, and such other expense incurred until she was again upon her voyage to the port of Cape Town, South Africa.

IX.

That the valuation of said vessel, less the cost of repairs, is the sum of forty-six thousand, six hundred forty-two and 99/100 dollars (\$46,642.99).

X.

That the value of said cargo remaining on board after the jettison of the said deck load and at the time of the changing [15] of the course of said vessel for said port of distress, is the sum of sixty-one thousand, six hundred sixty-two dollars (\$61,662.).

XI.

That the expense of said deviation and cost of repairs aforesaid, is the sum of eight thousand,

three hundred seventeen and $62/100$ dollars (\$8,317.62).

XII.

That the amount of contribution in general average which said cargo should pay to said vessel is the sum of four thousand, six hundred ninety-four and $22/100$ dollars (\$4,694.22).

XIII.

That heretofore and before the commencement of this action, said Smith, Kirkpatrick & Co., Inc., and cross-respondent, in consideration of the delivery of said cargo to said Small & Morgan, agreed to pay to cross-libelant the amount of the contribution in general average, if any, which should become due from said cargo to said vessel.

XIV.

That on the 15th day of March, 1920, and upon the delivery of said cargo, said Small & Morgan agreed in writing with cross-libelant that all losses and expenses which by way of general average on account of said voyage should be made to appear to be due from them, should be stated by Geo. E. Billings Co., and would be paid by them to said Geo. E. Billings Co.; that a copy of said average agreement is hereunto annexed and marked Exhibit "A"; that in accordance with said agreement, said Geo. E. Billings Co. on May 14, 1921, stated said amounts and determined that there was due from said cargo the sum of four thousand, six hundred

ninety-four and 22/100 dollars (\$4,694.22); that copies of said statement were thereupon delivered to said Smith, Kirkpatrick & Co., Inc., and cross-respondent [16] and that neither said Smith, Kirkpatrick & Co., Inc., nor said cross-respondent, nor said Small & Morgan, has ever notified said Geo. E. Billings Co., or cross-libelant, of any objection to said statement.

XV.

That all and singular the premises are true, and within the admiralty and maritime jurisdictions of the United States and of this Honorable Court.

Wherefore, cross-libelant prays that this Honorable Court will be pleased to decree to cross-libelant the payment of said general average contribution amounting to the sum of four thousand, six hundred ninety-four and 22/100 dollars (\$4,694.22) with interest and costs, and that said cross-libelant may have such other and further relief as in law and justice it may be entitled to receive.

PILLSBURY, MADISON & SUTRO

Proctors for cross-libelant. [17]

State of California,

City and County of San Francisco—ss.

R. H. Holmberg, being first duly sworn, deposes and says: That he is the Secretary of Pacific Freighters Company, a corporation, the cross-libelant in the above entitled cause, and as such Secretary is authorized to make this verification for and

on behalf of said cross-libelant; that he has read the foregoing Cross-libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and that as to those matters he believes it to be true.

R. H. HOLMBERG

Subscribed and sworn to before me this 26th day of August, 1921.

[Seal] FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [18]

EXHIBIT "A".

Geo. E. Billings Co., Average Adjusters and Insurance Brokers, 308-312 California Street, San Francisco.

Represented by Mather & Co., Philadelphia, New York, Boston and Seattle.

AVERAGE AGREEMENT

Whereas, the Scho. "Rosamond" whereof J. H. Brown was Master, having on board a cargo consisting principally of Lumber, sailed from Puget Sound on or about the 15th day of March, 1920, bound for Cape Town, and, in the due prosecution of her said voyage, it is alleged that suffered heavy weather and put into San Francisco for the safety of the vessel and cargo.

And whereas, by reason of the occurrences of the voyage, certain losses and expenses have been incurred, and other losses and expenses may hereafter be incurred, which may be a charge, (by way of General Average or otherwise) upon the said Vessel, her earnings as Freight, and her Cargo, or either of them, or upon specific interests;

Now, in consideration of the premises, we, the subscribers (charterers, owners, shippers, or consignees, of the said Vessel, her earnings as Freight, or her Cargo; or agents or attorneys of charterers, owners, shippers, or consignees, of the interest described and set opposite our signatures), do hereby severally and respectively (but not jointly, or one for the other) covenant and agree (for ourselves personally, our principals, and for our and their respective successors, executors, and administrators), to and with The Pacific Freighters Co. and/or Geo. E. Billings Co. (as Trustees for all concerned), that all losses and expenses aforesaid which shall be made to appear to be due either from us, our principals, or from any firm of which we are or have been co-partners, whether as charterers, owners, shippers, consignees, or as subscribers hereof, shall be paid unto the said Geo. E. Billings Co. (as Trustees for all concerned) by us respectively according to the part or share in the said Vessel, her earnings as freight, or her Cargo, which either belongs to us, belongs or is consigned to, or is for the account of, any person or persons for whom we are agents or attorneys, or with whom we are or

have been co-partners, or in which we are or have been in any manner concerned, provided that such losses and expenses shall be stated and apportioned in accordance with the established usages and laws in similar cases, and such payment shall be made upon the completion of the statement of such losses and expenses, and upon due notice being given of the completion thereof.

And we do further bind ourselves to furnish promptly (upon request of said Adjusters) all such information and documents as they may require from us respectively to make said adjustment; and we warrant that the information furnished will be correct.

And should the value of services rendered in whole or in part to cargo be determined either by amicable settlement or by arbitration, we hereby severally agree to pay each our rateable proportion of any sum thus fixed or determined upon; and in the event of an action or suit being brought to recover for or determine the value of such services, we hereby severally agree to give bond therein in the same manner as if the person or persons by whom suit is brought had required such bond direct from us before surrendering the cargo; and we further severally agree to pay and fully satisfy any final decree that may be rendered.

This agreement may be executed in several parts of like tenor, the whole of which shall constitute but one agreement and shall have the same effect as if each of said parts were severally signed by us.

In Witness Whereof, we have to these presents set our hands, in the City of Cape Town, Union of South Africa, this 20th day of November, in the year of our Lord, One thousand Nine Hundred and Twenty.

Signatures—Small & Morgan.

No. of Packages and Description—11307 pcs. Douglas Fir and/or rough Clear Spruce.

Amount of Invoice—\$61661.71. Full particulars and original invoices will be sent you later (direct).

Where insured—Saint Paul Fire Marine Insurance Co. of Saint Paul, Minnesota. [19]

[Endorsed]: Admission of service. Filed Sep. 2, 1921. [20]

[Title of District Court and Cause.]

EXCEPTIONS TO ANSWER.

To the Hon. M. T. Dooling, Judge of the Southern Division of the United States District Court for the Northern District of California, Division One:

St. Paul Fire & Marine Insurance Co., libelant herein, respectfully files its Exceptions to the Answer to the Libel on file in the above named cause, and for ground of exception alleges:

I.

Said libelant excepts to the said answer, and particularly unto the further and separate defense therein contained, upon the ground that the matters

set forth in said alleged further and separate defense, do not constitute a defense to the cause of action set forth in the libel.

Wherefore, libelant prays that the said alleged separate and further defense be stricken from the said answer and for such other and further relief in the premises as may be proper.

NATHAN H. FRANK

IRVING H. FRANK

Proctors for Libelant.

[Endorsed]: Admission of service. Filed May 15, 1922. [21]

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE OUT
PORTIONS OF ANSWER

To Pacific Freighters Company, a Corporation,
Respondent, and to Messrs. Pillsbury, Madison
& Sutro, Proctors for said Respondent:

You And Each Of You Will Please Take Notice:
That on Saturday, the 27th day of May, 1922, at
the hour of 10 o'clock A.M. of said day, or so soon
thereafter as counsel can be heard, at the Court
Room of the above entitled Court, in the Post
Office Building, in the City and County of San
Francisco, the libelant above named will move the
Court to strike out the following portions of the
answer on file herein:

Libelant moves to strike out that part of the
answer beginning on page 4, line 1 thereof with the

words "And for a further and separate defense respondent alleges", down to and including line 18, ending with the words "any objection to said statement," on the ground that the said matter is irrelevant and immaterial, and that the same does not constitute a defense to the cause of action set forth in the libel on file [22] herein.

Said libelant further moves to strike out all that part of the said answer marked "Exhibit 'A'," and attached thereto, called "Average Agreement," on the ground that the same is irrelevant and immaterial.

Said motion will be made upon the pleadings and papers on file in the above entitled cause.

Dated: May 15, 1922.

NATHAN H. FRANK

IRVING H. FRANK

Proctors for Libelant.

[Endorsed]: Admission of service. Filed May 15, 1922. [23]

[Title of District Court and Cause.]

EXCEPTIONS TO CROSS-LIBEL OF
PACIFIC FREIGHTERS COMPANY.

To the Hon. M. T. Dooling, Judge of the Southern Division of the United States District Court for the Northern District of California, Division One:

St. Paul Fire & Marine Insurance Co., libelant and cross-respondent herein, respectfully files its

Exceptions to the Cross-libel of Pacific Freighters Company, respondent and cross-libelant herein, and for ground of exception alleges:

I.

Said libelant and cross-respondent excepts to the said Cross-libel on file in the cause above named, on the ground that the same does not state facts sufficient to constitute a cause of action against the libelant and cross-respondent herein.

Wherefore, libelant and cross-respondent prays that the said cross-libel be dismissed and for such other and further [24] relief in the premises as may be proper.

NATHAN H. FRANK

IRVING H. FRANK

Proctors for Libelant and
Cross-respondent.

[Endorsed]: Admission of service. Filed May 15, 1922. [25]

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE OUT
PORTIONS OF CROSS-LIBEL.

To Pacific Freighters Company, a Corporation,
Cross-Libelant, and to Messrs. Pillsbury, Madison & Sutro, Proctors for said Cross-Libelant:

You, And Each Of You, Will Please Take Notice:
That on Saturday, the 27th day of May, 1922, at the
hour of 10 o'clock A.M. of said day, or so soon

thereafter as counsel can be heard, at the Court Room of the above entitled court, in the Post Office Building, in the City and County of San Francisco, the cross-respondent above named will move the court to strike out the following portions of the cross-libel on file herein:

Libelant and Cross-respondent moves to strike out that part of the cross-libel beginning on page 4, line 19 thereof with the [26] words, "That on the 15th day of March, 1920", down to the end of allegation XIV of said cross-libel ending with the words on page 5 thereof, line 4 "to said statement", on the ground that the said matter is irrelevant and immaterial.

Libelant and cross-respondent moves to strike out all of "Exhibit 'A'," attached to said cross-libel and called "Average Agreement", on the ground that the matter therein contained is irrelevant and immaterial.

Said motion will be made upon the pleadings and papers on file in the above entitled action.

Dated: May 15, 1922.

NATHAN H. FRANK

IRVING H. FRANK

Proctors for Libelant and
Cross-respondent.

[Endorsed]: Admission of service. Filed May 15, 1922. [27]

[Title of District Court and Cause.]

Nathan H. Frank, Esq. and Irving H. Frank, Esq., Proctors for Libelant.

Pillsbury, Madison & Sutro, Proctors for Respondent.

ON EXCEPTIONS TO ANSWER AND CROSS-LIBEL, AND MOTION TO STRIKE OUT PARTS THEREOF.

The exceptions to the answer, and to the cross-libel herein are overruled, and the motions to strike out parts thereof are denied.

October 5th 1923.

M. T. DOOLING

Judge

[Endorsed]: Filed Oct. 5, 1923. [28]

[Title of District Court and Cause.]

ANSWER TO CROSS-LIBEL.

To the Honorable the United States District Court in and for the Northern District of California, Southern Division. Division Three.

THE ANSWER

of St. Paul Fire & Marine Insurance Co., a corporation, to the cross-libel of Pacific Freighters Company, a corporation, in a cause of general average civil and maritime alleges:

I.

Admits the allegations of Articles I, II, and III, of said cross-libel.

II.

Answering unto Article IV. of the said cross-libel the said cross-respondent admits that in the month of May, 1920, [29] Messrs. Comyn, Mackall & Co. shipped on board the Schooner "Rosamond", at the port of Port Blakeley, Washington, a cargo of lumber to be by said vessel transported from said port of Port Blakeley, Washington, to Cape Town, South Africa, and that said Comyn, Mackall & Co then and there sold and transferred said cargo to Smith, Kirkpatrick & Co., Inc. Cross-Respondent however, denies the allegation in said Article IV. contained, that Smith, Kirkpatrick & Co., Inc., then and there sold or transferred the said cargo to Small & Morgan, and denies that the said Small & Morgan were at all or at any of the times in the said cross-libel mentioned or subsequent thereto, the owners of the said cargo.

III.

Answering unto Article V. of the said Cross-libel, Cross-Respondent admits that the Schooner "Rosamond" sailed from the port of Port Blakeley, Washington, with the cargo of lumber on board hereinabove referred to, for the port of Cape Town, South Africa, and admits that while on her said voyage she experienced heavy gales, which caused

her to leak and to jettison her deck cargo; admits that in consequence thereof it became necessary for the safety of the said vessel and the remaining cargo, for the said vessel to square away for a port of distress, and that she then and there did square away for a port of distress, and arrived at the port of San Francisco, on the 16th day of May, 1920.

Cross-respondent admits that on the arrival of the said vessel at the port of San Francisco, it became necessary to discharge her said cargo and place the said vessel in dry dock for repairs. Cross Respondent further alleges that upon the said repairs being completed, the vessel's said cargo was re-loaded, and a new cargo taken on board to replace the deck load which had theretofore been jettisoned and lost. [30]

IV.

Answering unto Article VI. of the said Cross-libel, Cross-Respondent admits that in and by virtue of the contract of affreightment under which the said cargo of the Schooner "Rosamond" was being transported, the freight on her first cargo was prepaid and considered as earned on the completion of the loading thereof, and Cross-Respondent alleges that for the new cargo taken on board at the port of San Francisco as alleged in the preceding allegation of this Answer, the said Schooner "Rosamond" received a new and addi-

tional freight amounting to the sum of Twenty-one thousand one hundred and nineteen and no/100 dollars (\$21,119.00).

V.

Answering unto Article VII. of the said Cross-libel, Cross- Respondent admits that the said vessel thereupon proceeded upon her voyage and arrived at the port of Cape Town, South Africa, and safely delivered her said cargo.

As to the allegation that said vessel arrived at said Port on the 10th day of November, 1920, this Cross-Respondent is ignorant, so that it can neither admit nor deny the same, wherefore it calls for proof thereof.

VI.

Answering unto Article VIII. of the said Cross-libel, Cross-Respondent admits that the said Schooner "Rosamond" and her said cargo remaining on board after the said jettison and at the time the said vessel changed her course for a port of distress, are liable to contribution in general average rateably for the cost and expense of putting into said port of distress and repairing said vessel and such other expense incurred until she was again upon her voyage to the Port of Cape Town, South Africa; and Cross-Respondent further alleges [31] that the said vessel and her said cargo remaining on board after the said jettison are likewise entitled to be credited pro rata for the

extra freight received by the said vessel at the said port of distress, as the result of the substitution of the new cargo for that portion of the cargo which had been jettisoned.

VII.

Cross-Respondent admits the allegations of Articles IX., X and XI. of the said Cross-libel.

VIII.

Answering into Article XII. of said Cross-libel, Cross-Respondent denies that the amount of contribution in general average which the said cargo should pay to the said vessel, is the sum of Four Thousand six hundred and ninety-four and $22/100$ dollars (\$4,694.22), and denies that there is any sum whatsoever or at all, payable or due the said vessel as contribution in general average from the said cargo or otherwise or at all. In this behalf, Cross-Respondent alleges that the freight received by the said vessel as the result of putting into said port of distress, is the sum of Twenty-one thousand one hundred and nineteen and $no/100$ dollars (\$21,119.00), and further alleges that the said vessel should pay as contribution in general average to the said cargo, the sum of Seven Thousand two hundred and twenty-four and $72/100$ dollars (\$7,224.72).

IX.

Answering unto Article XIII. of said Cross-libel, Cross-Respondent denies that before the com-

mencement of this action, or at any other time or at all, either Smith, Kirkpatrick & Co., Inc., or Cross-Respondent, agreed to pay Cross-libelant, the amount of the contribution in general average if any which should become due from said cargo to said vessel either in consideration of the delivery of the said cargo to Small & Morgan, or in consideration of the delivery of said cargo to anyone or at all, or at all agreed to pay Cross-libelant any contribution in general average. [32]

X.

Answering unto Article XIV. of the said Cross-libel, Cross-Respondent alleges that it has no information as to the allegation therein contained that on the 15th day of March, 1920, or upon the delivery of the said cargo, Small & Morgan agreed either in writing or otherwise with Cross-libelant that all losses and expenses which by way of general average on account of the voyage of the said Schooner "Rosamond" should be made to appear to be due from them, should be stated by Geo. E. Billings Co., and would be paid by them to said Geo. E. Billings Co., wherefore, it can neither admit nor deny the same, and calls for strict proof thereof.

As to the allegation that "Exhibit A" attached to the said Cross-libel is a copy of the said alleged average agreement in said Article XIV. referred to, Cross-Respondent is ignorant so that it can

neither admit nor deny the same, wherefore, it demands strict proof thereof.

Cross-Respondent admits that Geo. E. Billings Co. on or about the 14th day of May, 1921, prepared a statement of general average, but alleges that said statement is imperfect and fails to properly state the items chargeable against the said cargo or against the said vessel and owners, and fails properly to state the items of expense of the contributory values of ship and freight. Further alleges that the said statement fails to show the contribution in general average which the said vessel should pay to said cargo which contribution is estimated by cross respondent to be the sum of Seven thousand two hundred and twenty-four and 72/100 dollars (\$7,224.72). As to the allegation that said statement prepared by Geo. E. Billings Co. was so prepared in accordance with the alleged agreement alleged in Article XIV. of the Cross-libel set forth, said Cross-respondent is ignorant so that it can neither admit nor deny the same, wherefore, it calls for strict proof thereof.

Cross-respondent admits that copies of a statement prepared by Geo. E. Billings Co. was delivered to Smith, Kirkpatrick & Co., Inc., but denies that neither Smith, Kirkpatrick & Co., Inc., nor Cross-Respondent ever notified the said Geo. E. Billings Co. or Cross-libelant of its objection to the said statement, and on the contrary alleges [33] that the said Smith, Kirkpatrick & Co. Inc.,

and the said Cross-Respondent did in fact disagree with and object to the said statement so prepared, as imperfect and improper.

XI.

Answering unto Article XV. of said Cross-libel, Cross-Respondent alleges that all and singular the premises are true.

And for a further and separate defense Cross-Respondent alleges that the said Cross-libel fails to state a cause of action against the Cross-Respondent, and that it appears therefrom that no privity of contract exists between said Cross-libelant and the said Cross-Respondent.

Wherefore, Cross-Respondent prays that the said Cross-libel on file herein, may be dismissed and for its costs herein.

SAINT PAUL FIRE AND MARINE
INSURANCE COMPANY,

By M. C. HARRISON

NATHAN H. FRANK

and

IRVING H. FRANK

IRVING H. FRANK

Proctors for Cross-Respondent,

1215 Merchants Exchange Bldg.,

San Francisco, Calif [34]

INTERROGATORIES PROPOUNDED TO
CROSS-LIBELANT BY CROSS-RESPOND-
ENT AND TO BE ANSWERED UNDER
OATH.

First Interrogatory:

Please to state the items and amounts thereof which Pacific Freighters Co. alleged it expended in order that the Schooner "Rosamond" might proceed upon her voyage and earn the additional freight on the cargo taken on at San Francisco after the deviation? Also attach copies of vouchers for the same.

Second Interrogatory:

Please attach to your answers to these interrogatories a copy of the alleged agreement between Smith, Kirkpatrick & Co. Inc., St. Paul Fire & Marine Insurance Co., a corporation, and Pacific Freighters Company, a corporation, whereby it is alleged the said Smith, Kirkpatrick & Co. Inc., and the said St. Paul Fire & Marine Insurance Co. agreed to pay Pacific Freighters Company in consideration of the delivery of the cargo of the Schooner "Rosamond" to Small & Morgan, the amount of any contribution in general average which should become due from the said cargo to the said vessel, as alleged in Article XIII. of the Cross-libel.

Third Interrogatory:

Please attach to your answers to these interrogatories an itemized statement of the additional cargo and the freight received thereon which said cargo was taken on board at the port of San Francisco after a deviation to said port as a port of distress, together with all vouchers with relation thereto.

SAINT PAUL FIRE AND MARINE
INSURANCE COMPANY,

By M. C HARRISON.

NATHAN H. FRANK

and

IRVING H. FRANK

Proctors for Cross-Respondent,
1215 Merchants Exchange Bldg.,
San Francisco, Calif. [35]

State of California,

City and County of San Francisco.—ss.

M. C. Harrison, being first duly sworn, deposes and says: That he is the Agent for Saint Paul Fire and Marine Insurance Company, a Corporation, Cross-Respondent in the above entitled cause, and as such Agent is authorized to make this verification for and on behalf of said Cross-Respondent; that he has read the foregoing Answer to Cross-Libel, and knows the contents thereof; that the same is true of his own knowledge, except as to

the matters which are therein stated upon information and belief, and that as to those matters he believes it to be true.

M. C. HARRISON

Subscribed and sworn to before me, this 29th day of May, 1924.

[Seal] NEVA A. REMPER

Notary Public

[Endorsed]: Admission of service. Filed May 29, 1924. [36]

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES ANNEXED TO THE ANSWER TO CROSSLIBEL FILED HEREIN.

In answer to the First Interrogatory, respondent and cross-libelant says that the items and amounts thereof which respondent and cross-libelant expended in order that the Schooner "Rosamond" might proceed upon her voyage and earn the additional freight on the cargo taken on at San Francisco, are set forth in the Statement of General Average mentioned in Article 14 of the cross-libel, which said statement is hereunto annexed, marked Exhibit "A", hereby referred [37] to and made a part hereof the same as if herein set forth at length; that there was no deviation whatever on the voyage mentioned in said cross-libel; that copies

of the vouchers for said items are set forth in said statement.

In answer to the Second Interrogatory, respondent and cross-libelant says that said agreement is set forth in certain correspondence between respondent and cross-libelant, said Smith, Kirkpatrick & Co. Inc., and libelant and cross-respondent; that copies of said correspondence are annexed and marked Exhibit "B", hereby referred to and made a part hereof the same as if set forth at length.

In answer to the Third Interrogatory, respondent and cross-libelant says that an itemized statement of the additional cargo and the freight received thereon which said cargo was taken on board at the Port of San Francisco as a port of distress, is hereunto annexed and marked Exhibit "C" hereby referred to and made a part hereof the same as if herein set forth at length; that there was no deviation on said voyage; that copies of all vouchers with relation to said additional cargo and freight are hereunto annexed and marked Exhibit "D", referred to and made a part hereof the same as if herein set forth at length.

PILLSBURY, MADISON & SUTRO
Attorneys for Respondent and Cross-
Libelant. [38]

State of California

City and County of San Francisco—ss.

R. H. Holmberg, being first duly sworn, deposes and says: I am the Secretary of the Pacific Freighters Company, a corporation, respondent and Cross-libelant in the above case. I have read the foregoing answers to the interrogatories annexed to the libelant and cross-respondent's answer to the cross-libel herein, and the same are true to the best of my knowledge, information and belief.

R. H. HOLMBERG

Subscribed and sworn to before me this 19th day of June, 1924.

[Seal] FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California.

[Clerk's Note: Exhibit A to the Answers to Interrogatories Annexed to the Answer to Cross-Libel (being the Statement of General Average) is identical with Exhibit D to the Stipulation for Submission of Cause herein. Set forth at page 80 of this printed record.] [39]

EXHIBIT "B"

Smith, Kirkpatrick & Co. Inc.
Maritime Bldg. 10 Bridge St.
New York.

November 12th, 1920.

Messrs. W. L. Conyn & Co. Inc.,
San Francisco, Cal.

Dear Sirs:

Insurance Claim "Rosamond"—Notwithstanding we submitted complete papers covering this claim to the San Francisco Underwriters months ago, we are still without any settlement. M. C. Harrison & Co. through whom our brokers covered the cargo appear to have been raising one question after another which has up to now caused a serious delay in reaching an adjustment. Their latest contention covered by a telegram to our brokers here, of which we enclose copy, will show you a totally new contention which is wholly contrary to the views held by all our adjusters and other Underwriters here. Our brokers replied to that message pointing out that the Charter Party called for prepayment of the freight when shipped on the Coast, and which freight was not subject to return if the vessel did not deliver the cargo at destination as their telegram appeared to imply, but presumably they must have had before them the terms of the Charter Party which plainly stated the freight was payable and had been paid when the shipment was made.

We accordingly wired them that their contention was incorrect as so confirmed by the big adjusters here, Johnson & Higgins and Mr. Desbard, Chairman of the Underwriters Adjustment Committee. In the message our brokers added that you [40] would be able to confirm our statement as to the terms of the Charter Party, although our understanding is that some time ago when the insurance claim was presented you communicated with them as to the terms of the Charter Party. Harrison & Co. wired our brokers yesterday that they had referred to you as we directed but that you were unable to say anything definite until the following day. We thereupon thought it advisable to wire you at length, which we did as per copy of message herewith, and hope you will have been able to satisfy Harrison & Company as to the correct terms of the Charter Party. Whether such information will now persuade Harrison & Co. to authorize payment to us of our claim here by the Adjusters, Johnson & Higgins, into whose hands they placed the adjustment, remains to be seen but we sincerely trust there will be an end to this intolerable delay.

Harrison & Co. seem to overlook the fact that freight was paid on the second deck cargo as well as the original deck cargo and that they also insured and received the premium on the former and no one here can understand their contention that we must recover from the ship the prepaid freight on the first deck load.

We must apologize for imposing on your good will and time in this matter but we are most anxious to get an immediate settlement of this long overdue claim and have to thank you in anticipation for helping us towards this end.

Very truly yours,
SMITH, KIRKPATRICK & CO. INC.
G. W. KIRKPATRICK,
Treasurer. [41]

COPY OF TELEGRAM

November 10 AM 12 31

B223SF 133 NL

MX San Francisco Calif 9

Steel & Mayer

3 Cedar St. New York

Rosamond due to the loss of cargo freight was not earned by the ship stop assurers thereby become entitled to your right against the ship for return of prepaid freight stop if ship carries forward a second deck cargo in order to earn freight on first it is earning the freight under a new contract and with a cargo not insured by policies on the first cargo and by accepting such an adjustment you are taking for your own use the freight money belonging to assurers stop assureds are therefore directly liable to assurers for that freight money and it is a proper offset against claim under the policies stop assurers are willing to pay insured value of

the deck cargo lost less the freight on such cargo upon production of the policies.

M. C. HARRISON & CO. [42]

COPY OF TELEGRAM

November 11, 1920

W. L. Comyn & Co. Inc.,
San Francisco, Cal.

Harrison Co. underwriters continue intolerable delay in settling our insurance claim Rosamond on the extraordinary ground that freight on original deck cargo not having been earned they are entitled to deduct same from our claim leaving us to recover such freight from ship apparently ignoring the fact that charter party specifically stipulated freight payable when lumber was shipped. All adjusters here state Harrisons contention untenable. Please see them immediately confirming terms charter party as we cannot longer tolerate further delay settling claim. Wire our expense if Harrison now agreeable authorize adjustment.

SMITH, KIRKPATRICK & CO. INC. [43]

COPY OF TELEGRAM

November 15 AM 28

D37NY 69

AX New York NY 1130A 15

W L Comyn & Co Inc

San Francisco Calif

Have following cable today from consignees Rosamond captain refuses to discharge cargo unless we give a guarantee contribution to general average of twelve percent billings average adjusters if this is in order can you make arrangements with underwriters hasten reply get owners to instruct captain to release goods message ends we are puzzled over this question being referred to us have you word whether cargo arrived intact and undamaged

SMITH KIRKPATRICK & CO INC [44]

Saint Paul Fire and Marine Insurance Co.

M. C. Harrison & Co.

General Agents Marine Dept.,

28 Maryland Bldg.,

San Francisco, Cal.

Nov. 15, 1920.

Schooner "Rosamond" and owners,

San Francisco,

Cal.

Gentlemen:

We have the following telegram from Messrs. Steel & Mayer of New York, representing Messrs. Smith, Kirkpatrick Co:

“New York, Nov. 15, 1920

Rosamond demanding twelve percent general average contribution before discharging cargo deliver guaranty to Comyn McCaull covering this stop wire immediately when accomplished reply at once when payment of loss will be made.

(Signed) STEEL & MAYER”

In accordance therewith, we herewith hand you guarantee signed by the St. Paul Company covering the cargo shipped from Port Blakeley. Kindly Acknowledge receipt.

Yours very truly,

M. C. HARRISON

MCH/ELN

Gen. Agt. [45]

(Copy)

Pacific Freighters Company

November 15th, 1920

M. C. Harrison, Esq.,

c/o M. C. Harrison & Co.,

Gen. Ats., Saint Paul Fire & Marine Ins. Co.,
San Francisco, Cal.

Dear Sir:

Rosamond: With respect to your letter of even date, wherein you quote telegram from New York from representatives of Smoth, Kirkpatrick & Company, with regard to the security account gen-

eral average on the "ROSAMOND"; wish to advise that we have already telegraphed our Master and representatives in accordance with our privilege under the English Law, to the effect that we are entitled to a deposit in this instance, and we, therefore, respectfully request that such be arranged instead of the guarantee which you submit, and which is herewith returned.

Yours very truly,

PACIFIC FREIGHTERS COMPANY
R. J. RINGWOOD

RJR/H

Enc

Cy Roy C Ward. [46]

COPY OF TELEGRAM

San Francisco, Cal., November 15th,
1920.

Smith, Kirkpatrick & Co., Inc.,
10 Bridge Street,
New York City

ROSAMOND In view your difficulties collecting your claim from Underwriters we prefer having nothing to do with your insurers and to take deposit to which we are entitled by English law. If

ship detained by delay of consignee in putting up deposit we must insist upon payment demurrage as per charter.

W. L. COMYN & CO INC

(Chge to Sender)

51 Words Strt

RJR/H

12:30 PM

591 [47]

COPY OF TELEGRAM

San Francisco, Cal., November
15th, 1920.

Smith, Kirkpatrick & Co., Inc.,
No. 10 Bridge Street,
New York City

Understand you placed insurance through Steele and Mayer who in turn placed insurance through M C Harrison here who now disputing your claim STOP You will appreciate from our previous telegram owners cannot see their way clear to accept Harrisons guarantee of payment average charges Steele and Mayer have wired Harrison to give owners guarantee STOP Owners will accept cash deposit from M. C. Harrison or guarantee of payment of average charges from yourselves and release cargo promptly but owners are not willing release

cargo and take chances on Harrisons guarantee
STOP Consignee has refused put up necessary
deposit which in turn he would have to collect from
Underwriters in America and owners will not press
this point if Harrison makes necessary cash deposit
or you guarantee payment average

W L COMYN & CO INC

charges

(Chge to Sender)

130 Words Nite

WLC/H

629 [48]

COPY OF TELEGRAM

1920 Nov 16 PM 4 44

B297NY 107 1/77

co NewYork NY 631P 16

W L Comyn & Co Inc

San Francisco Calif

Rossamond we find guarantee of the StPauls In-
surance Co not Harrisons tendered you stop re-
fusal of responsible underwriters guarantee under
such circumstances surely an unheard of and arbi-
trary proceeding stop it is of high importance to
us and consignees to proceed quickly with dis-
charge and we beg you will not allow any personal
feelings against Harrisons individually to prejudice

our interest we appeal to you in the spirit which invoked your telegram of June fourth and our response moreover our unfailing respect for mutual interest to accept StPauls tendered guarantee and cable master to deliver cargo kindly wire reply quickly to avoid further invaluable loss time discharging

SMITH KIRKPATRICK & CO INC [49]

San Francisco, Cal., November 16th, 1920

Smith, Kirkpatrick & Co., Inc.,
10 Bridge Street,
New York City

Rosamond Replying your message If you will obtain St. Paul Fire and Marine Insurance Companys guarantee in New York to pay average charges we will gladly accept same and cable master immediately to deliver cargo and waive any question of demurrage owing to consignee not making deposit STOP We anxious to assist not impede We have no personal feeling against Harrison but feel that even if we accept St Pauls guarantee made by him we would have trouble in collecting here whereas if you obtain their guarantee are satisfied you will have no difficulty in collecting as soon as

we forward you average statement for collection
under St Pauls guarantee

W L COMYN & CO INC

(Chge to Sender)

118 Words nite

Wlc/H

5:15 PM

678

CyRCWard [50]

Pacific Freighters Company

November 16, 1920

Messrs. Smith, Kirkpatrick & Co.,

Marine Building,

10 Bridge St.,

New York City.

Dear Sirs:

Loss "Rosamond"

This will acknowledge receipt of your letter of the 12th contents of which we have read with interest, and we are enclosing herewith copy of a letter which we have written to M. C. Harrison & Co.

Whether this will be of any good in getting Harrison to change his tactics, we have serious doubt. There is no question about the validity of the claim in every particular, but that will have very little effect on Messrs. M. C. Harrison & Co.

We beg to confirm telegrams passing relative to average charges. The owners unquestionably have the right to ask the consignees to put up the necessary deposit before discharge of cargo is made, and the Owners' adjusters have requested this course be taken. We however, assume this would inconvenience your good buyers in Cape Town, as if they put it up they would have to come back here and collect under the policies through your goodselves. This is, of course, the right method but we realize it would be inconvenient to them and to yourselves, and therefore we are prepared either to collect the deposit here from the underwriters or take a good and sufficient guarantee for the payment of these charges.

While it is true that M. S Harrison & Co. offer St. Paul Fire & Marine guarantees, they have the happy knack of issuing St. Paul Fire & Marine policies and then not paying them. If we accept the guarantee of the St. Paul Fire & Marine Insurance Co. we would be in exactly the same position as you are on your losses. We have for years refused to accept St. Paul Fire & Marine policies written by Harrison in this city, and if we do not take St. Paul Fire & Marine policies written by Harrison, you can understand that we are not [51] accepting St. Paul Fire & Marine guarantee written by the same gentlemen.

We have at all times been willing to accept the St. Paul Fire & Marine policies issued by the agents in New York, and we are equally willing to accept

the guarantee for the payment of average charges, as we have never had any trouble at all in the collection of our claims from the New York Agents, but practically everyone has the same experience with M. C. Harrison & Co. here, and claims do not seem to be collected.

Therefore we wired you that if you can go ahead and get St. Paul Fire & Marine guarantee through your brokers in New York direct, we would accept same and wire the Master to release the cargo and the owners to waive all claims for demurrage owing to the deposit not being put up in Africa.

We think you will agree with us that we are not in any way endeavoring to impede matters, but endeavoring in every way to assist both your good-selves and the Consignees of the cargo, and taking only steps to insure collection of the average charges which we are certainly entitled to do.

We are sure that you will appreciate, in view of the trouble you have had in the collection of your claim through M. C. Harrison & Co. under the St. Paul Fire & Marine Insurance Co. that our position is not untenable in refusing to take St. Paul Fire & Marine guarantee given by Harrison, and on which M. C. Harrison here would have to pay out his money.

Yours very truly,
PACIFIC FREIGHTERS COMPANY
W. L. COMYNS
Director

WLC/M
756 [52]
enc.

Pacific Freighters Company

November 18, 1920

Messrs. M. C. Harrison & Co.,

San Francisco,

California.

Gentlemen:

"Rosamond" Loss

A copy of your telegram of November 10th addressed to Messrs. Steel & Mayer, also the claim of Smith, Kirkpatrick & Co. has just come into our hands.

Therein you say that if the ship carried forward a second cargo in order to earn the freight on the first, etc.

This is to advise you that the vessel was not obligated to carry on a second cargo without the payment of additional freight, and that, as a matter of fact, it was agreed between the shipper of the new cargo and the ship that an additional freight should be paid, and the said new freight was paid.

We are advising you of this because we think it will make clear to you that Messrs. Smith, Kirkpatrick have suffered a loss of the prepaid freight on that cargo which was jettisoned.

Yours very truly,

PACIFIC FREIGHTERS COMPANY

W. L. COMYNS,

Director

M

754 [53]

SAINT PAUL FIRE AND MARINE INSUR-
ANCE COMPANY

M. C. Harrison & Co.,
General Agents—Marine Dept.,
28 Maryland Bldg.,
San Francisco, Cal.

Nov 18, 1920

SCH. "ROSAMOND" and Owners,
San Francisco,
California.

Gentlemen:

General Average

Yours of the 15th refusing the St. Paul Com-
pany's Guaranty.

The English Law does not give you the privilege
of cash deposit. It merely requires that the cargo
owner gives a sufficient security for the payment
of the General Average. This we have tendered and
you refuse.

To send a deposit to South Africa and then to
send it back again is a useless expense and is not
customary and of no advantage to you and a dis-
tinct disadvantage to us.

We protest against such a demand and such a
course. We shall hold you responsible for all pecu-
niary loss and expense resulting from this extra-
ordinary demand and course.

Yours very truly,
M. C. HARRISON
Gen. Agts.

MCH/ELN [54]

Pacific Freighters Company

November 18, 1920

Messrs. M. C. Harrison & Co.,
28 Maryland Building,
San Francisco, Calif.

Dear Sirs:—

“General Average Rosamond”

We beg to acknowledge receipt of your letter of the 18th, contents of which we have read with interest.

Why should we consider a guarantee by you sufficient security for the payment of these charges when we know you are disputing payment of policies you issued on the cargo and for which the buyers paid you premiums in good faith.

In our opinion if you dispute the payment of these policies you are just as liable to dispute payment of our general average charges, and for this reason we do not care to accept the security you offer. We have now arranged with the agents in New York of the receivers of the cargo to accept their guarantee for the payment of our average charges.

Yours very truly,

PACIFIC FREIGHTERS COMPANY

Director

COPY OF TELEGRAM

San Francisco, Cal. November 18th, 1920.

Smith, Kirkpatrick & Co., Inc.,
10 Bridge Street,
New York City

Awaiting advice that you have secured guarantee
from St Paul Fire and Marine Insurance Co in
order cable Master Rosamond discharge cargo

W L COMYN & CO INC

(Chge to Sender)

21 Words Strt

WLC/H

9:50 AM

763 [56]

COPY OF TELEGRAM

1920 Nov 18 AM 11 41

F14 NY 50

AX NewYork NY 1 P 18

W L Comyn and Co Inc

SanFrancisco Calif

We hereby guarantee you general average due from
cargo on sailer Rosamont sailing from Pacific coast
to Capetown March nineteenthtwenty Please cable
captain immediately to deliver cargo and wire us
to this effect for your personal information we hold
similar guarantee from StPaul signed by president
now here

SMITH KIRKPATRICK AND CO INC [57]

COPY OF TELEGRAM

San Francisco, Cal., November 18th, 1920

Smith, Kirkpatrick & Co., Inc.,
 10 Bridge Street,
 New York City

Thanks your wire Have cabled Captain deliver
 cargo immediately making no claim demurrage ac-
 count delay deposit

W L COMYN & CO INC

(Chge to Sender)

16 Words Strt

WLC/H

12:10 PM

770 [58]

 COPY

St. Paul Fire & Marine Insurance Co.
 S/V "Rosamond"

* * * * *

Messrs. Smith, Kirkpatrick & Co., Inc.,
 10 Bridge Street,
 New York City.

Dear Sirs:

We understand that we insured a full cargo of
 lumber on the above vessel through our San Fran-
 cisco office from Pacific coast ports to Cape Town,
 South Africa. We further understand that the con-
 signees of the cargo, Messrs. Small & Morgan, have

requested that you take charge of the general average claim with our company and arrange for the necessary security.

We understand that the owners of the vessel are willing to accept your guaranty for the payment of general average due from the cargo and that you are willing to give such a guaranty on being guaranteed, in turn, by this company. Accordingly, in consideration of your entering into an agreement (by telegraph or otherwise) with the owners of the vessel to guarantee the payment to them of any general average due from the cargo on the voyage in question, we hereby agree to protect and indemnify you in respect of such guaranty and to pay any general average which may prove to be due from the cargo. It is understood, of course, that you will not actually settle the general average without consulting us, as we will desire an opportunity to examine the general average statement and satisfy ourselves that it is correct before passing upon it.

Very truly yours,

ST. PAUL FIRE & MARINE INSURANCE CO.,

By (F. K. BIGELOW)

President. [59]

Smith, Kirkpatrick & Co., Inc.

Maritime Building, 10 Bridge Street,
New York

November 20, 1920.

Messrs. W. L. Comyn & Co. Inc.,
San Francisco, Cal.

Dear Sirs:

“Rosamond”—Several telegraphic messages have been exchanged between us relative to General Average on this vessel.

We do not purpose rehearsing the story—the most extraordinary one in our long experience and quite incomprehensible in some respects, in the earlier stages at least.

Our Cape Town friends had never been confronted with a demand for cash deposit in general average account before and having knowledge of the irritating delays the St. Paul Insurance Co. have needlessly been putting us to in respect to settlement of our claim—respecting the loss of the deckload—they were afraid to comply lest it might in some way prejudice us here.

Why you should—with the danger and cost of delay in discharging—have taken so exacting a position, moreover have refused to aid in facilitating matters, because at odds with Harrison & Co., we could not imagine—for after all it is not Harrison, as a principal, but the St. Paul Insurance Co. that was concerned.

However, to get to final point, Mr. Bigelow, the President of the St. Paul Insurance Co. happened to be here—we got to him with all the particulars of the case before us—we secured his guarantee per copy herewith. We wired you ours—begging you would cable your Captain immediately to release the cargo.

Your reply came promptly saying this had been done—moreover you were good enough to say that he had also been instructed to waive demurrage—which we were much relieved to get for we had meantime received a cable to say that the consequences were serious and they proposed holding for damages whoever was at fault. [60]

Probably you know that the “Haviside” had arrived at Cape Town but in our message yesterday we thought well to advise you.

You are no doubt getting your share of the troubles. Exporters have had thrust upon them by the refusal of the Banks to purchase foreign Bills of Exchange.

The ordeal is most trying and unfortunately it is hard to figure when and from what source relief can come. New business has of course fallen flat. As of possible interest, we enclose copies of recent circulars we have sent our clients.

Are there any boats for South Africa now under charter and what do you call the market price for

Merchantable Fir and the probable charter rate for a sailer?

Yours very truly,
SMITH, KIRKPATRICK & CO. INC.,
J. A. W. SMITH [61]

W. L. Comyn & Co. Inc.

29th November 1920

Messrs. Smith, Kirkpatrick & Co.,
No. 10 Bridge Street,
New York City N. Y.

Dear Sirs:

Rosamond—This will acknowledge receipt of your valued favor of the 20th, contents of which we have read with interest and our letter in connection with this matter has crossed yours.

We received cable advices from the Captain that he has delivered the cargo and we now presume that everything is in order.

We have read with much interest your circular letters of October 21st and November 3rd, 4th, 10th and 12th and with you, we fail to see where relief is going to come from. We are all up in the air and the only saving clause to our minds to the whole position is the fact that everyone is in the same box and as far as we can see, is likely to stay there until some concerted effort is made by the politicians and bankers working in unison to straighten financial matters up.

Lumber—There absolutely is no market for the reason that it is impossible to finance. The mills are all closing down one after another and while the nominal price of lumber is \$27.50 base “H” list, there are no sales being made to amount to anything. We bought one small cargo for South America last week at \$26.50 base, but the mill cutting this cargo is closing down as soon as they have the cargo cut. Of course no mill can produce lumber at any such price, paying present prices for logs, that is \$24.00 for Merchantable logs. The cost of cutting is about \$9.00, so unless the mill owns their own logs and sacrifices them at way below the market, they cannot afford to keep open at \$24.00.

[62]

The loggers are also closing down all their camps as they cannot sell logs and get any price at all for them.

So far as freights are concerned, they are becoming noticeable by their absence and there is no saying what rate a vessel could be secured at today, if you had a firm order in hand. We should quote So. Africa today, if we had an enquiry, at not to exceed \$27.50 for lumber and \$40.00 for freight plus insurance, plus a small profit—say in the neighborhood of \$70.00 to \$72.50, according to the cost of insurance. This is about as close as we can give the market at this writing.

We will appreciate very much if you will favor us with a copy of any further circular letters you

issue as we very much appreciate being kept posted on conditions existing in New York.

Yours very truly,
W. L. COMYN & CO. INC.
W. L. COMYN,
President.

WLC:D
1300 [63]

W. L. Comyn & Co. Inc.

November 29th, 1920.

Messrs. Smith, Kirkpatrick & Co., Inc.,
No. 10 Bridge Street,
New York City.

Dear Sirs:

Referring to our telegram of the 18th of November and previous correspondence, relative to the cargo by the "Rosamond", now being discharged at Capetown.

This simply to advise you that we are now in receipt of a cable, dated the 27th of November, from Captain Brown stating that cargo has been released in accordance with our cable to him of the 18th of November.

Yours very truly,
W. L. COMYN & CO., INC.
R. J. RINGWOOD
Vice President

RHH/
1302 [64]

W. L. Comyn & Co., Inc.

November 29th, 1920.

Messrs. Smith, Kirkpatrick & Co., Inc.,
No. 10 Bridge Street,
New York City.

Dear Sirs:

S/V "Rosamond":

We have to acknowledge receipt of your letter of the 22nd of November, contents of which are noted. This is the first intimation that we have received relative to refusal of the National Bank of South Africa's guarantee. However, due to the fact that we have very little information, other than that passing between your good selves and this office, we shall await advices from you after receipt of information by you, from your friends at Capetown.

"Russell Haviside": We thank you for the information relative to funds for disbursements for this vessel. We shall be pleased to receive your advice as to the amount handed the Captain.

Yours very truly,
W. L. COMYN & CO., INC.,
R. J. RINGWOOD
Vice President.

RHH/

1308 [65]

EXHIBIT "C"

STATEMENT OF ADDITIONAL CARGO AND
FREIGHT RECEIVED THEREON AT
SAN FRANCISCO

403,641' at \$20.00 per M \$8,072.82

Less Managing Commission at 2½% 201.82

\$7,871.00

[66]

EXHIBIT "D"

310 California St.,
San Francisco,

November 11th, 1920

Messrs. W. L. Comyn & Co., Inc.,
San Francisco, Cal.In Account With
Pacific Freighters Company
Schooner "Rosamond"

DEBIT NOTE

To—Freight on Lumber on a/c Replace-
ment 403,641' at \$52.50 per M \$21,191.15

E & O E

San Francisco, California,

November 11th, 1920. [67]

EXHIBIT "D"

310 California St.,
San Francisco,

May 14th, 1921.

Messrs. W. L. Comyn & Co., Inc.,
San Francisco, Cal.

In Account With
Pacific Freighters Company

CREDIT NOTE

Schooner "Rosamond" Voyage 6

By Difference in Freight on
Replacement Cargo load-
ed at San Francisco, as
charged on Nov. 11, 1920:

403,641' at \$52.50 per M \$21,191.33

As adjusted:

403,641' at \$20.00 per M 8,072.82 \$13,118.33

By Managing Commission on
above Freight: 2½% on
\$8,072.82

201.82

\$13,320.15

E & O E

San Francisco, May 14, 1921

* * * * *

[Endorsed]: Admission of service. Filed Jun. 20,
1924. [68]

[Title of District Court and Cause.]

STIPULATION FOR SUBMISSION OF
CAUSE.

It is hereby stipulated that the above named cause may be submitted to the Court for determination on the following question of law, to-wit:

Where the respondent's and cross-libelant's vessel loaded an entire cargo of lumber, including a deck load, belonging to libelant's assignor, as per charter party marked "Exhibit A" and bills of lading in the form marked "Exhibit B" attached hereto, and the freight thereon was prepaid and considered as [69] earned upon the loading thereof, and the vessel thereafter proceeded on her voyage with all of said cargo on board and in the course thereof she experienced heavy weather which caused her to leak and to jettison her deck cargo and to put into a port of distress for the safety of the vessel and remaining cargo, where she arrived, discharged the same and made repairs upon the completion of which she reloaded the said remaining cargo and took a new deck cargo to replace the jettisoned deck load and received a new and additional freight therefor, and thereupon proceeded upon her voyage and arrived at her port of destination and there safely delivered her cargo, and the vessel and cargo remaining on board after the aforesaid jettison being liable to contribution

in general average ratably for the cost and expense of putting into the port of distress and the general average repairs to the said vessel, and such other general average expense incurred until she was again upon her voyage to her port of original destination, and where the cargo owner prior to taking delivery of the cargo signed a document a copy of which is hereto attached marked "Exhibit C" and a statement of general average was thereafter made, a copy of which is hereto attached and marked "Exhibit D", and made a part hereof, without prejudice to any right libellant may have to question the correctness of said statement or to any right respondent may have to claim that the same is not subject to question, the intention of the parties hereto being that this cause is submitted on the following question of law: [70]

(Question)

Is the said vessel and her said remaining original cargo entitled to be credited pro rata for such extra freight received by said vessel and her owners at the port of distress as the result of the substitution of the new cargo for that portion of the cargo which had been jettisoned.

It is further stipulated that if the vessel and her owners are liable to the cargo owners for a

contribution in general average then the respondent and cross-libelant is liable to the libelant and cross-respondent for the same.

It is further stipulated that if the cargo is liable for any general average contribution to the vessel and her owners then that the libelant and cross-respondent is liable to the respondent and cross-libelant for the same.

It is further stipulated that if the Court shall answer the above question of law in the affirmative, such interlocutory decree may be entered in favor of the libelant with a reference to the United States Commissioner as the Court may deem proper.

It is further stipulated that should the Court answer the question of law in the negative, such decree may be entered as the Court may deem proper.

It is further stipulated that libelant and cross-respondent shall have fifteen (15) days from the date of such submission within which to file an opening brief, respondent and cross-libelant shall have fifteen (15) days to answer and libelant and cross-respondent fifteen (15) days thereafter to reply. [71]

It is further stipulated that either party hereto may except to the findings and report of the United States Commissioner, appeal from the final decision of the Court on the question of law and

the ruling of said court on the exceptions to the findings of the Commissioner.

Dated: January 22d, 1925.

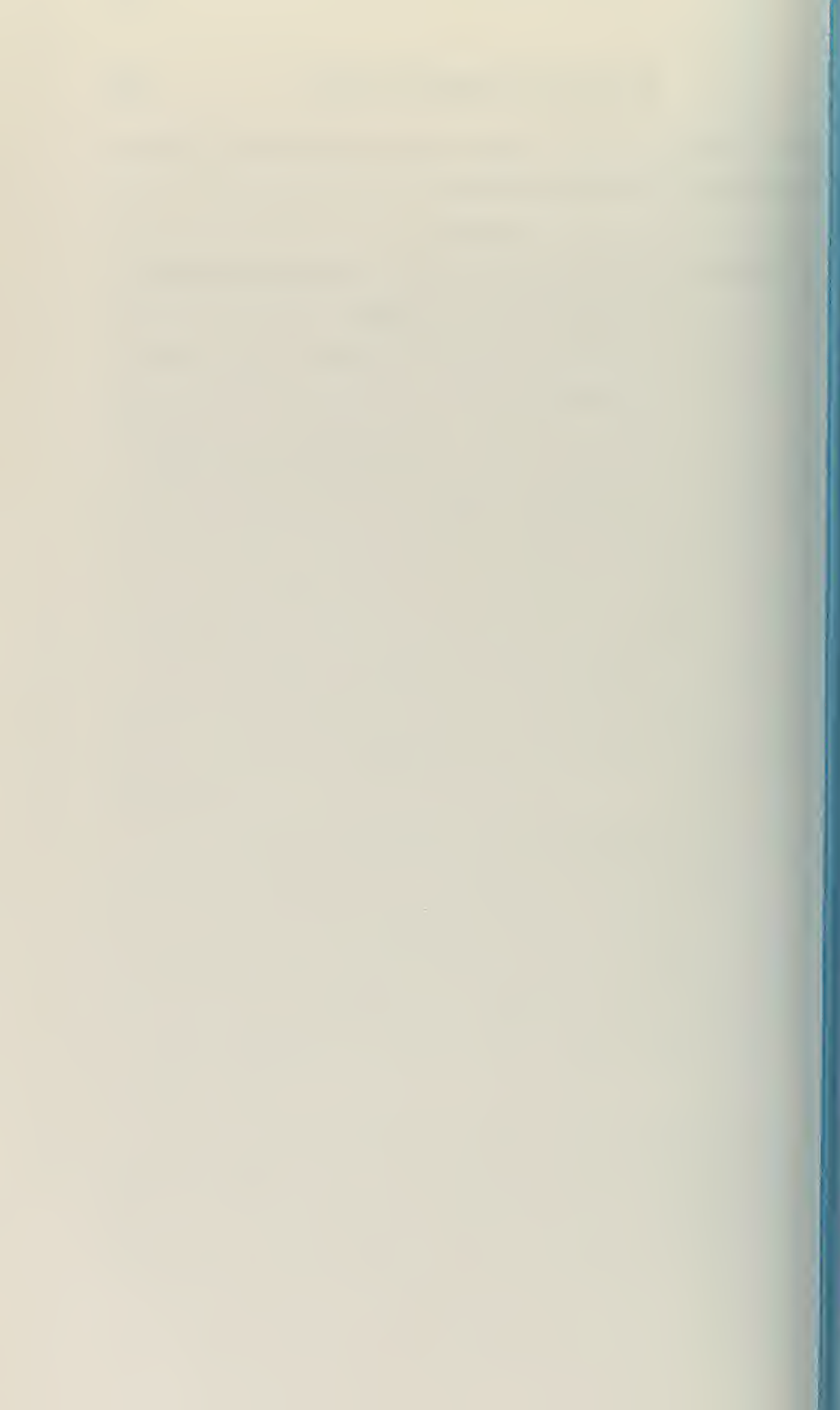
NATHAN H. FRANK & IRVING H. FRANK

IRVING H. FRANK

Proctors for Libelant and Cross-Respondent.

PILLSBURY MADISON & SUTRO

Proctors for Respondent and Cross-Libelant. [72]



- 81. ~~See for terms of charter.~~
- 82. discharge (inward) ~~is hereby given them the usual commission for doing such a business, or whatever vessel to which~~
- 83. R. While at Puget Sound or British Columbia, as above, vessel to be consigned to Charterers' agents (Rothchild & Co.), outward, and if in ballast, also inward, free of commission, but paying them usual fee for doing Custom House business (not to exceed \$25), and also to clear in the name of Charterers.
- 84. S. Should vessel not have arrived at her loading port, on or before 12 o'clock, noon, of the 31st March, 1920
- 85. to have the option of cancelling or maintaining this Charter, on arrival of vessel.
- 86. Lay days ~~not~~ to commence before when vessel is ready ~~unless at Charterers' option.~~
- 87. T.
- 88. U. ~~Two and one-half per cent Brokerage is due to~~
- 89. V. To the true and faithful performance of each and all of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, each to the other in the penal sum of
- 90. ESTIMATED AMOUNT OF CHARTER
- 91. IN WITNESS WHEREOF we have hereunto signed our names at the time and place above mentioned.

Freight to be Net pre loading, same to cons cargo lost at any sta

WITNESS J. P. McCall }
 Signed }
 { PACIFIC FREIGHT COMPANY,
 per Cyrus Ryder.
 WITNESS C. J. Lumber }
 { CASH RECEIPT COMPANY,
 per J. Claude Daly.

EXHIBIT A.

“EXHIBIT B”

Comyn, Mackall & Co.
San Francisco

Shipped, in good order and condition by
Comyn, Mackall & Co.

Exporters of Lumber
Shipping and Commission
Merchants

on board the American Schooner called the “Rosamond” whereof J. H. Brown is Master, now lying in at the Port of Port Blakely, Washington and bound for Capetown, South Africa to say:

Under Deck

Under Deck

Mark
.....Pcs. (Lumber) No.....ft.

.....pieces lumber
said to contain feet board measure

On Deck

On Deck

Mark
.....pcs. lumber No.....ft.

.....pieces of lumber said to containfeet board measure.

being marked and numbered as per margin (all on board to be delivered) and to be delivered in like good order and condition at the aforesaid Port of Capetown, South Africa (the act of God, perils of the sea, fire, barratry of the master and crew, enemies, pirates, assailing thieves, arrest and restraint of princes, rulers and people, collision, stranding and other accidents of navigation excepted, even when occasioned by the negligence default or error in judgment of the pilot, master, mariner, or other servants of the shipowners) unto Order or to their assigns, as per Charter Party dated Dec. 31, 1919.

Totals

Pes.

ft.

At \$..... \$.....

Freight Prepaid

J. H. B.

with average as per York-Antwerp Rules, 1890, and other conditions and exceptions as per Charter Party. In Witness Whereof, the Master of said Ship or Vessel hath affirmed to Three (3) Bills of Lading, all of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in Port Blakely, Washington this 4th day of March 1920

J. H. B.

Master

[74]

“EXHIBIT C”

Geo. E. Billings Co.

Average Adjusters and Insurance Brokers

308-312 California Street

San Francisco

Represented by

Mather & Co.

Philadelphia, New York

Boston and Seattle

AVERAGE AGREEMENT.

Whereas, the Scho. “Rosamond” whereof J. H. Brown was Master, having on board a cargo consisting principally of Lumber, sailed from Puget Sound on or about the 15th day of March, 1920, bound for Cape Town, and, in the due prosecution of her said voyage, it is alleged that suffered heavy

weather and put into San Francisco for the safety of the vessel and cargo.

And whereas, by reason of the occurrences of the voyage, certain losses and expenses have been incurred, and other losses and expenses may hereafter be incurred, which may be a charge (by way of General Average or otherwise) upon the said Vessel, her earnings as Freight, and her Cargo, or either of them, or upon specific interests;

Now, in consideration of the premises, we, the subscribers (Charterers, owners, shippers, or consignees, of the said Vessel, her earnings as Freight, or her Cargo; or agents or attorneys of Charterers, owners, shippers, or consignees, of the interest described and set opposite our signatures), do hereby severally and respectively (but not jointly, or one for the other) covenant and agree (for ourselves personally, our principals, and for our and their respective successors, executors, and administrators), to and with The Pacific Freighters Co. and/or Geo. E. Billings Co. (as Trustees for all concerned), that all losses and expenses aforesaid which shall be made to appear to be due either from us, our principals, or from any firm of which we are or have been co-partners, whether as charterers, owners, shippers, consignees, or as subscribers hereof, shall be paid unto the said Geo. E. Billings Co. (as Trustees for all concerned) by us respectively according to the part or share in the said Vessel, her earnings as freight, or her Cargo, which either be-

longs to us, belongs or is consigned to, or is for the account of, any person or persons for whom we are agents or attorneys, or with whom we are or have been co-partners, or in which we or have been in any manner concerned, provided that such losses and expenses shall be stated and apportioned in accordance with the established usages and laws in similar cases, and such payment shall be made upon the completion of the statement of such losses and expenses, and upon due notice being given of the completion thereof.

And we do further bind ourselves to furnish promptly (upon request of said Adjusters) all such information and documents as they may require from us respectively to make said adjustment; and we warrant that the information furnished will be correct.

And should the value of services rendered in whole or in part to cargo be determined either by amicable settlement or by arbitration, we hereby severally agree to pay each our rateable proportion of any sum thus fixed or determined upon; and in the event of an action or suit being brought to recover for or determine the value of such services, we hereby severally agree to give bond therein in the same manner as if the person or persons by whom suit is brought had required such bond direct from us before surrendering the cargo; and we further severally agree to pay and fully satisfy any final decree that may be rendered.

This agreement may be executed in several parts of like tenor, the whole of which shall constitute but one agreement and shall have the same effect as if each of said parts were severally signed by us.

In Witness Whereof, we have to these presents set our hands, in the City of Cape Town Union of South Africa this 20th day of November in the year of our Lord, One Thousand Nine Hundred and Twenty.

Signatures—Small & Morgan.

No. of Packages and Description—11307 pcs.
Douglas Fir and/or rough Clear.

Amount of Invoice—\$61661.71. Full particulars and original invoices will be sent you later (direct).

Where insured—Saint Paul Fire Marine Insurance Co. of Saint Paul Minnesota.

[Endorsed]: Filed Jany. 22, 1925. [75]

EXHIBIT D
STATEMENT
OF
GENERAL AVERAGE
SCHR. "ROSAMOND"
MARCH 1920.

Geo. E. Billings Co.
Average Adjusters,
San Francisco.

Narrative

1920.

March 27th,

While on a voyage from Port Townsend, laden with lumber and bound for Cape Town, South Africa, the Schr. "Rosamond", J. H. Brown, Master, experienced a gale causing the vessel to leak badly, and as the pumps could not control the water, it was necessary to jettison part of the deck load. The gas pump and extra supply of coal was under water, and as there was not a sufficient quantity of fresh water and fuel to keep the donkey boiler running continuously, the Master decided for the safety of all concerned to change his course and seek a port of refuge

April 16th,

Encountered a hurricane doing various damage to ship and stores, and on

May 15th,

Arrived in San Francisco.

May 17th,

A survey was had and the discharge of cargo was commenced.

June 24th,

Repairs had been completed and cargo reloaded. Thereafter waited until a new deckload arrived, and on

July 3rd,

The loading thereof was completed. The 4th being Sunday and the 5th a holiday, on

July 6th,

Shifted to Stream. Detained to replace the crew (who had been discharged as a measure of economy).

July 13th,

Resumed the voyage.

Nov. 8th,

Arrived at Cape Town.

Dec. 10th,

Completed discharge of cargo.

This statement is drawn up in accordance with English Law and usage modified by the York-Antwerp Rules of 1890, (as provided for by the Charter Party).

The San Francisco Disbursements were examined and approved as apportioned by Surveyor Brown.

Master's Protest

State of California,
City & County of San Francisco—ss.

On this 17th day of May, 1920, before me, Frank L. Owen, a Notary Public, duly commissioned and sworn, personally came J. H. Brown, Master of the American Schooner "Rosamond" of San Francisco, who, being first duly sworn, deposes and says: That the said vessel sailed from Port Townsend on the 15th day of March, 1920, laden with lumber and bound for Cape Town, South Africa, and that on March 27th, 1920, or thereabouts, experienced fresh gale from the North, causing vessel to roll and strain and ship seas on deck, and to leak. Located a bad leak in fore peak and as the pumps could not control it, it was necessary to jettison some of the deckload forward. The gas pump was under water and also the extra supply of coal. As there was not a sufficient quantity of fresh water and fuel to keep the donkey boiler running continuously, it was necessary to put into a port for the safety of vessel and cargo. After some light weather, a hurricane was experienced which did various damage to vessel, stores, etc., and some cargo was burnt for fuel and more jettisoned, and on 15th May, 1920, arrived at San Francisco, and fearing

damage, enters his protest against all losses, damages, etc., reserving the right to extend the same at the time and place convenient.

J. H. BROWN,

Master.

Subscribed and sworn to before me this 17th day of May, 1920.

FRANK L. OWEN,

Notary Public in and for the City & County of San Francisco, State of California.

Master's Affidavit

State of California,

City & County of San Francisco—ss.

J. H. Brown, Esq., being first duly sworn, deposes and says:

That he is the Master of the American Schooner "Rosamond" of San Francisco, and was acting in that capacity at all times hereinafter referred to;

That on March 27th, 1920, during a voyage from Port Townsend, laden with lumber, and bound for Capetown, the said vessel experienced very heavy weather, which caused her to strain and spring a bad leak so that it was deemed necessary to change the course and seek a port of refuge for the safety of the ship and cargo;

That after the gasoline pump went out of commission, steam was got up on the donkey boiler to work the pumps and it later became necessary to use salt water to continue the pumping;

That on April 16th, 1920, encountered a hurricane, shipping seas on deck, flooding the cabin and threatening to swamp the vessel, about ten feet of water in the hold. After great difficulty, managed to cut several holes in the deck of the cabin to let the water down into the hold where the pumps could take it;

That on April 18th, 1920, the weather moderated and the deck load was jettisoned from the starboard side to take the list out of the Schooner and ease the leak aft;

That on April 24th, 1920, was forced to jettison some more of the deck load on account of the leak.

That on Saturday, May 15th, 1920, was taken in tow when off Moss Beach (a short distance from San Francisco) by the Tugs "Sea Queen" and "Wyadda" and came to anchor in the stream at 7.20 P.M.

Sunday, May 16th, 1920, machinist worked aboard repairing the boiler and pumps;

Monday, May 17th, 1920, surveyor came aboard and recommended that the cargo be discharged and the vessel go on drydock for repairs and, in pursuance of this recommendation, towed to Oakland City Wharf and commenced discharging cargo men

at work caulking topsides. The crew was discharged as a measure of economy;

That after all the lumber was out, went on dry-dock to repair the heavy weather damage, and then returned to Oakland City Wharf where the repairs were completed, and the cargo was re-loaded;

That on June 24th, 1920, finished reloading the old cargo and waited until June 27th, 1920, when the new deck load arrived by steamer from Port Blakely;

That on July 3rd, 1920, the loading was completed;

That July 6th, 1920, shifted from the Oakland City Wharf to the stream and is now waiting to replace the crew before resuming the voyage;

That all the officers and crew who arrived with him were discharged at San Francisco and have since left this port.

J. H. BROWN.

Subscribed and sworn to before me this 9th day of July, 1920.

FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco.

Report of Preliminary Survey

San Francisco, May 18, 1920.

Acting at the request of the owners, I, the undersigned, did on May 17th, 1920, attend on board the above named vessel while anchored in bay off Black Point for the purpose of ascertaining the nature and extent of damage sustained by vessel through encountering heavy weather whilst on a voyage from Port Angeles to Cape Town, South Africa, from which port vessel sailed on March 15th, 1920, fully laden with a cargo of lumber, said vessel having been sighted off Moss Beach standing inshore on May 15th, 1920 by the fisherman who reported to San Francisco by telephone that vessel required assistance.

The tug "Wyadda" under orders proceeded to vessel, also tug "Sea Queen", both tugs placing their tow lines on board and towed vessel to San Francisco, arriving at said port at 7.15 P.M. May 15th, 1920.

Upon arrival and examination the following was noted:

Findings:

That vessel showed signs of encountering heavy weather by her condition fore and aft.

About 30,000 ft. of her original deck load was found on deck aft, a considerable number of pieces having been found cut to provide fuel for donkey boiler.

A number of donkey boiler tubes were found leaking and corroded through on account of excessive use of salt water.

Main Deck in Cabin:

Found about 12 holes chopped in same and as stated this was done to free cabin of water and allow it to run into cargo hold.

Outside Topside Caulking:

Found cement at present water line broken, and missing, oakum worked and washed out of seams, for practically full length of vessel. Caulking of bow ports washed and oakum hanging out, also around stern, the same condition.

Recommendations

That donkey boiler tubes be repaired sufficiently to allow steam to be raised so as to heave up anchor.

That vessel be towed over to the Municipal Wharf at Oakland to discharge what is left of deckload, and to commence discharging a part of under deck cargo to allow for further survey of hull.

That caulkers be got in readiness preparatory to effecting repairs.

A further and continued survey will be held on May 19th, 1920 to determine the exact amount of

damage and repairs needed, when a full detailed report will be made covering all recommendations.

(Signed)

CECIL BROWN,
Surveyor for the Board of
Marine Underwriters of
San Francisco.

Report of Final Survey

Dated, July 26th, 1920.

On May 18, 1920, vessel was towed to Clay Street, Wharf, Oakland to discharge her cargo.

On May 19, 1920, commenced discharging.

On May 26, 1920, finished discharging.

Vessel discharged 34,622 feet from off her deck, this amount being all that was left of the 451,594 feet of her original deckload and 591,785 feet from under deck, making a total of 626,407 feet discharged. The lumber under deck was very wet from salt water and about 100,000 feet stowed in bottom of hold was very much discolored. From time of arrival until discharged, a careful watch was maintained and it was noted that vessel made no water whilst laying still carrying 22" water in her bilges during this period.

During the period of discharging and after completion, frequent surveys were held to determine vessel's condition and it was found that hull was very badly strained throughout, also rigging.

It was thus recommended that vessel be placed on drydock for examination and on June 2, 1920 was hauled out on the Union Iron Works Marine Railway at Alameda, where survey was held of bottom and the following recommendations were then made.

Keel—Found hogged for 20".

Caulking of Bottom and Topsides: Cement found broken, oakum wet and spewed.

Recommended—That bottom and topside be caulked full length and to be cemented and painted as before.

Caulking of Waterways, Waterway Seams and Stanchions—Found badly strained and soft and pitch broken.

Recommend—The above to be caulked full length of vessel and to be pitched as before. Wash strakes to be basked off to allow for caulking behind stanchions.

Ceiling—Found open as much as 1½" in places.

Recommended—That ceiling be wedged full length of vessel both sides.

Lodging Knees of Hold beams found pulled from ceiling 2".

Recommended—That beams be pumped up; knees drawn back to as near as original position as possible, wedged behind and refastened.

Hardwood Caps—To be installed on all center line stanchions whilst beams are pumped up.

Bow Ports—Found more or less soft, especially around caulking ends.

Recommend—That four new bow ports be made, fitted and installed.

Bow Planks in Wake of Ports—Port Side. Ends of two strakes found soft and split.

Recommend—That two strakes be split out and renewed for a length of ten feet size 5"x6"x5"x8" and to be fastened as original.

Cant Timbers in wake of ports where found soft; rotten wood to be cut away and reinforced with timbers of the same scantling.

Iron Bill Boards—One found missing and the others disturbed.

Recommend—That same be removed to allow for caulking of seams and to be returned and refastened with new one to replace the one missing.

Plank Sheer Strake—Port sides amidships. Found soft around fastening, also started from fastening.

Recommend: That the above strake be split and renewed to original butts and to be fastened as original.

Bulkhead at Break of Poop deck—In this vicinity hull had spread from strain, allowing considerable water to run into hold.

Recommend—That bulkhead be reinforced with 8x8 timbers installed on fore part of the present bulkhead, the cill of which is to be well fastened to beams and the following timbers to be edge bolted with through bolts and to be well caulked after completion. Before bulkhead is started two 1½" tie

rods to be installed set up with turnbuckles and to extend from side to side with heads of rods set up countersink $\frac{1}{2}$ "x4" iron plates.

Masts—All masts to be rewedged at main deck with new mast coats.

Main Deck in Cabin—When chopped with axe to allow water to run into hold, size 6"x6" to be split out and renewed to approved butts as directed.

Joiner work in Cabin—Including T&G bulkheads, doors and locks broken by movable furniture, etc., to be repaired and restored to original condition.

Companion Way Leading to Cabin—Broken by sea. To be repaired and restored to original condition.

Wheel Box—Carried overboard by sea. To be replaced by new one.

Screw Steering Gear—To be overhauled and put into good working condition.

Rigging—Chain outer Bob Stay. Found broken. To be repaired with the required number of links forged into same.

Turnbuckles bolts of Rigging—Where work to be renewed. All standing rigging to be overhauled and set up after repairs.

Main Pumps—To be drawn and overhauled.

Donkey Boiler—Tubes damaged on account of using salt water and all found leaking.

Tubes to be cut out and renewed. A complete list of stores damaged by salt water to be furnished by Master.

Painting—All new work to receive two coats of paint to conform to surrounding colors.

Outside Painting—Whilst vessel is on drydock, bottom to receive one coat of copper paint.

All the above outlined repairs have been completed in a satisfactory manner and vessel restored to a seaworthy condition to enable her to continue on her voyage to Cape Town, South Africa.

Vessel reloaded and ready for sea on July 6, 1920.

CECIL BROWN,

Surveyor.

LOADING CERTIFICATE

I hereby certify that the Am. 4 Mast Schr. "Rosamond", 1030 tons gross, whereof Brown is master for the present voyage from this port to Durban, South Africa, is now loaded and ready for sea.

Her cargo consists of—

Lumber in Hold	626,407 ft.
----------------	-------------

Lumber on Deck	401,231 ft.
----------------	-------------

Total	<u>1,027,638 ft.</u>
-------	----------------------

Height of Deckload

10'8" Ford 11'8" Aft

Draft Loaded in—Salt Water

19 feet 0 inches aft

18 " 9 " for'd

Freeboard

3 feet 6 "

This vessel put into San Francisco on May 15/1920 in distress and with loss of deckload. The under deck cargo was discharged; vessel placed on drydock, damage repaired, bottom and topside caulked, also stanchions and waterways, and rigging overhauled. Vessel reloaded, cargo well and properly stowed and deckload well secured. Hatches caulked and cemented and covered with 2 good tarpaulins each hatch.

Vessel now in all respects fit to continue her voyage.

About 400 M feet of lumber shipped at San Francisco to replace cargo lost.

Surveyed at Oakland and S. F. Bay 7th day of July, 1920.

CECIL BROWN,

Surveyor.

LIST OF STORES

(As compiled by Master.)

Stores and Equipment lost or damaged when deckload jettisoned.

- 1 Cargo Gaff.
- 3 14° Leading Blocks.
- 2 Rigging screws damaged.
- 1 Sliding spar 8x10"—40 ft.
- 2 pr. side skids.

REPORT OF SURVEY ON DONKEY BOILER

San Francisco, April 19, 1921.

Messrs. Geo. E. Billings Co.,

San Francisco.

Gentlemen:—

In compliance with your request, please be advised that on March 12, 1921 I proceeded to Murray Bros. shop on Folsom St. for a further survey of the donkey boiler ex above schooner and herewith submit the following:

The top head of the boiler was found very badly pitted and wasted away, from wear and tear, also the bottom of the furnace was found patched for almost the entire circumference of the boiler; as the tubes, 73 in number, at the time of the original survey were found in bad condition, being leaking and burnt from the use of salt water, it was recommended that boiler be retubed, but the condition of the top head and bottom of furnace as found did not warrant new tubes, unless new head and furnace were placed in *shall*, the cost of which would almost equal the price of a new boiler, which was ordered and installed by Murray Bros. as per instructions from Owners' Representative.

Trusting this is the information required,

Yours very truly,

(Signed) CECIL BROWN,

Surveyor.

CERTIFICATE OF VALUATION

San Francisco, Cal.

November 29, 1920.

Am. 4 Mast Schr. "Rosamond"

Built of Wood year 1900 at Benecia, Cal.

Gross Tons 1030.

Net Tons 985.

Dimensions 201 x 41 x 17.

At the request of Messrs. W. L. Comyn & Co.,

I the undersigned have this date appraised the value of the above named vessel in a sound condition as of November 10th, 1920 at Cape Town, South Africa.

After due consideration hereby appraise vessel, with her stores, outfit and equipment then on board as of November 10th, 1920, to be Seventy five thousand and no/100ths (\$75,000.00) Dollars, United States Currency.

CECIL BROWN,

Surveyor for the Board of
Marine Underwriters of
San Francisco.

CHARGES
AND
EXPENSES

[Clerk's note: The first 138 pages of items under the above heading, "Charges and Expenses" (being pages 18-155, inclusive, of the Statement of General Average), are omitted from the printed record pursuant to the order of the court dated July 31, 1939.]

DISBURSEMENTS		General Average 3rds	General Average Net	Vessel & Owners
37,529.30	Forward	1,232.68	6,511.23	29,785.39
	Thirds off general average.....	1,232.68		
	As customary	410.89		410.89
125.00	Board of Marine Underwriters July 7, For services of Captain C. Brown, making surveys and final loading certificate.....	821.79	821.79	
	Nov. 29, Valuation survey by Capt. Brown.....			
	Note: There was no Hull Insurance		125.00	
30.00	Board of Marine Underwriters Underwriters committee examining the adjust- ment and issuing a certificate.....		30.00	
79.60	Dakin Publishing Co. Copies of this statement.....		79.60	
37,904.30	Forward		7,567.62	30,196.28

DISBURSEMENTS		General	Vessel &
Y		Average Net	Owners
37,904.30	Forward	7,567.62	30,196.28
750.00	Adjusters		
	Professional Services; Consultations with vessel Owners and Master; going over accounts with the Underwriters' Surveyor; obtaining security; examining documents, obtaining the contributory values and for this adjustment and apportionment	750.00	
	General Average	<u>750.00</u>	
	Vessel & Owners.....	<u>\$8,317.62</u>	<u>\$30,196.28</u>
<u>\$38,513.90</u>			

CONTRIBUTING INTERESTS

	<u>Contributory Value</u>	<u>General Average</u>
Vessel		
Sound Value as per Certificate	\$75,000.00	
Less Cost of Repairs.....	28,357.01	
	\$46,642.99	
Plus Amounts made good.....	952.57	
	\$47,595.56	
	\$ 47,596.00	\$3,623.40

Freight None at Risk

The Charter Party provided:

Freight payable on loading to
be considered earned, vessel
or goods lost or not lost.

Freight

Shipped by Smith, Kirkpatrick & Co.

11,307 pes Douglas Fir and/or

Rough Clear Spruce.....

61,662.00

4,694.22

\$109,258.00

\$8,317.62

7.612825%

SETTLEMENT

	<u>Balance to Pay</u>	<u>Balance to Receive</u>
Vessel Owners		
Receive: Disbursements & Allowances.....	\$37,654.30	
Pay: General Average	\$ 3,623.40	
Owners Column	30,196.28	33,819.68
	\$4,694.22	\$3,834.62
Freight Owners and/or Underwriters		
Pay: General Average	\$4,694.22	
Adjusters		
Receive: Disbursements	\$ 109.60	
Fee	750.00	859.60
	\$4,694.22	\$4,694.22
	\$4,694.22	\$4,694.22

San Francisco, California,

May 14th, 1921.

GEO. E. BILLINGS CO.

By WILFRED PAGE

Director.

At a stated Term of the District Court of the United States of America, for the Northern District of the State of California, Southern Division, held at the Courtroom in the United States Post Office Building, in the City and County of San Francisco, State of California, on the.....day of July, 1928.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of District Court and Cause.]

INTERLOCUTORY DECREE.

The above entitled cause having been submitted to the Court under a stipulation of facts and for determination on the question of law in said stipulation propounded, and providing that if the Court should answer the question of law in said stipulation referred to in the affirmative, such interlocutory decree be entered in favor of the libelant with a reference to the United States Commissioner as the Court may deem proper;

And the said cause having been fully presented to the Court on briefs filed by the Proctors for the respective parties, and due deliberation having been had, the Court finds that the question of law in the

said stipulation propounded should be answered in the affirmative, and that the contributory value in general [76] average of the vessel in the stipulation herein above referred to, is the sum of Forty-seven thousand Five Hundred and ninety-six and no/100 Dollars (\$47,596.00), and that the contributory value of the cargo in said stipulation referred to, is the sum of Sixty-one thousand Six Hundred and Sixty-two and no/100 dollars (\$61,662.00), and that the total general average expenses amount to the sum of Eight Thousand Three Hundred and Seventeen and 62/100 dollars (\$8,317.62).

Now, therefore, it is ordered that a decree in favor of the libelant and cross-respondent and against the respondent and cross-libelant be entered, and that the said cause be, and it is hereby referred to United States Commissioner Arthur G. Fisk to ascertain and report the gross amount of new freight received by respondent and cross-libelant at the port of refuge referred to in the stipulation on which said cause was submitted and to deduct from the amount thereof the total amount of general average expenses incurred as hereinabove set forth, and to prorate the balance of the said new freight then remaining, between the libelant and cross-respondent and the respondent and cross-libelant in proportion as the contributory value of the vessel and cargo each bears to the whole contributory value.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Admission of service. Filed Jul. 19, 1928. [77]

LIBELANT'S EXHIBIT NO. 2

[Margin]

Vessel Sch. Rosamond

Policy No. 2903 - 8 77186 - 77191

Interest Lumber

Insured \$117,600.00

Paid \$21,191.16

Adjustment Office

Nature of claim—Lost deckload in heavy weather
451000 ft jettisoned April/May 1920

San Francisco, March 26th, 1921.

Received from the St. Paul Fire & Marine Insurance Co. Twenty One Thousand One Hundred Ninety-One 16/100 Dollars in full settlement of loss under policies as per margin; and in consideration of the payment of the above sum, the insured hereby assigns and transfers all rights in and about the subject matter of the insurance described in the margin, with full privilege and authority to sue in the name of the insured at the expense of the insurer.

Received Apr. 11, 1921. Ans'd.....

SMITH, KIRKPATRICK
& CO. INC.

JA. W. SMITH

E. MAYER

Asst. Treasurer

Please sign and return both vouchers.

(Reverse side)

St. Paul's Ex (2)

E.E.W.

St. Paul's Etc Ex No. (2)

Dec. 1, 1937

ERNEST E. WILLIAMS [78]

LIBELANT'S EXHIBIT NO. 3

[Margin]

Vessel—Sch. Rosamond

Policy No. 2903-2908/77186-77191

Interest—Lumber

Insured \$117,600.

Paid \$24,486.04

Adjustment—Telegraphic

Nature of Claim—Loss of deckload less estimated freight returnable.

Received Jan - 4 1921 Ans'd.....

San Francisco, March 26th, 1920.

Received from the St. Paul Fire & Marine Insurance Co. without prejudice for further claim for amount of freight deducted viz: \$21191.16
Twenty Four Thousand Four Hundred Eighty Six

and 04/100ths ——— Dollars in ~~full~~ settlement of loss under policies as per margin; ~~and in consideration of the payment of the above sum, the insured hereby assigns and transfers all rights in and about the subject matter of the insurance described in the margin, with full privilege and authority to sue in the name of the insured at the expense of the insurer.~~

Freight deducted on basis of M. C. Harrison & Cos. Telegram of Dec. 16th, 1920.

SMITH, KIRKPATRICK
& CO., INC.

G. W. KIRKPATRICK,

Treasurer

Please sign and return both vouchers.

(Reverse side)

St. Paul's Ex (3)

E.E.W.

St. Paul's etc Ex No. 3

Dec. 1, 1937

ERNEST E. WILLIAMS [79]

REPORT OF UNITED STATES COMMISSIONER.

To the Honorable Court Above Named:

Pursuant to the Interlocutory Decree of this Court, the undersigned was directed to ascertain the gross amount of new freight received by the respondent and cross-libelant at the port of refuge;

to deduct from said gross amount of new freight the total amount of general average expense (this general average expense has been determined by this Court); to prorate the balance of the said new freight then remaining, between the libelant and cross-respondent and the respondent and cross-libelant in proportion as the contributory value of the vessel (previously found by this Court) and cargo (previously found by this Court) bears to the whole contributory value (previously found by this Court).

By virtue of the above order, the matter was presented to your Commissioner. Evidence both documentary and oral, was introduced on behalf of the interested parties. Briefs were submitted by the respective litigants.

After considering the evidence and the submitted memoranda, [80] your Commissioner has the honor to report as follows:

Facts.

The Pacific Freighters Company, the respondent, owned a schooner named "Rosamond". During May, 1920, Messrs. Comyn, Mackall & Co., under a charter party, shipped a cargo of lumber on the "Rosamond" from Port Blakeley, Washington, for transportation to Cape Town, South Africa. The lumber was sold to Smith Kirkpatrick & Co.

Shortly after sailing the vessel encountered heavy storms, jettisoned her deck cargo, and in distressed condition put in to San Francisco as a port of refuge.

Subsequent to the making of repairs, the vessel, at the port of distress, loaded a new deck cargo to take the place of the cargo that had been jettisoned. On July 13, 1920, the "Rosamond" proceeded on the voyage. She arrived safely at her destination and the cargo was completely discharged on December 10, 1920.

Some time subsequent to the return of the vessel to San Francisco, an adjustment of freight on the replaced cargo was made between the respondent and W. L. Comyn & Co., the successor to Comyn, Mackall & Co.

Findings.

1. Gross amount of New Freight Received by the Respondent at the Port of Refuge.

Your Commissioner is satisfied and finds that the evidence establishes that the gross amount of new freight received at the port of refuge by the respondent is the sum of \$21,191.15.

2. General Average Expense (previously found in the Interlocutory Decree).

This Court, in the Interlocutory Decree, found the general average expense to be the sum of \$8,317.62. Accordingly, your [81] Commissioner finds the general average expense to be \$8,317.62.

3. Contributory Value of the Vessel (previously found in the Interlocutory Decree).

This Court found, in the Interlocutory Decree, the contributory value of the vessel to be \$47,-

596.00. Accordingly, your Commissioner finds the contributory value of the vessel to be the sum of \$47,596.00.

4. Pro-rata of the Balance of the New Freight Remaining after Deduction of General Average Expenses between the Libelant and Cross-Respondent and Respondent and Cross-Libelant in Proportion as the Contributory Value of the vessel and Cargo each bears to the Whole Contributory Value:

Contributory value of the cargo.....	\$61,662.00
Contributory value of the vessel.....	\$47,596.00

By simple arithmetic, the contributory value of the cargo is fifty-six per cent of the whole contributory value; the contributory value of the vessel is forty-four per cent of the whole contributory value.

Gross amount of new freight, as found above	\$21,191.15
--	-------------

Deducting General Average Expense, as found above.....	8,317.62
---	----------

Balance of new freight to be pro- rated	\$12,873.53
--	-------------

Your Commissioner finds that prorating the balance of new freight of \$12,873.53 in the proportions of 56% (cargo contributory value) and 44% (vessel contributory value), the libelant and cross-respond-

ent is entitled to the sum of \$7,199.18; and that respondent and cross-libelant is entitled to the sum of \$5,674.35. [82]

Recommendation:

Pursuant to the above findings, your Commissioner recommends that the libelant and cross-respondent be awarded the sum of \$7,199.18; and that the respondent and cross-libelant be awarded the sum of \$5,674.35.

Dated: April 23rd, 1938.

Respectfully submitted,

ERNEST E. WILLIAMS

U. S. Commissioner. [83]

Accompanying this report the undersigned herewith files the following, to-wit:

St. Paul Fire & Marine Insurance Company's Exhibit No. 1 (Depositions, including libelant's and cross-respondent's Exhibits 1 to 6 inclusive)

St. Paul Fire & Marine Insurance Company's Exhibit No. 2 (Receipt).

St. Paul Fire & Marine Insurance Company's Exhibit No. 3 (Receipt).

Pacific Freighters Company's Exhibit No. 1 (Page 467, Journal)

Pacific Freighters Company's Exhibit No. 2 (Pages 241-240A Journal voucher)

Pacific Freighters Company's Exhibit No. 3 (8 pages from ledger)

Pacific Freighters Company's Exhibit No. 4
(Journal entry)

Memorandum of St. Paul Fire & Marine Insurance Company.

Memorandum of Pacific Freighters Company.

Respectfully,

ERNEST E. WILLIAMS

U. S. Commissioner.

[Endorsed]: Filed Apr. 23, 1938. [84]

At a stated term of the District Court of the United States of America, for the Northern District of California, Southern Division, held at the Courtroom in the United States Post Office Building, in the City and County of San Francisco, State of California, on the day of March, One Thousand Nine Hundred and Thirty-nine.

Present: The Honorable A. F. St. Sure, District Judge.

No. 17,274-S

ST. PAUL FIRE & MARINE INSURANCE
CO., a corporation,

Libelant,

vs.

PACIFIC FREIGHTERS COMPANY,
a corporation,

Respondent.

PACIFIC FREIGHTERS COMPANY,

a corporation,

Cross-Libelant,

vs.

ST. PAUL FIRE & MARINE INSURANCE

CO., a corporation,

Cross-Respondent.

FINAL DECREE

This cause having been regularly submitted to the Court for determination, and the Court having given due consideration thereto and having entered its interlocutory decree herein in favor of the libelant and cross-respondent and against the respondent and cross-libelant, and having referred said matter to the United States Commissioner to ascertain and report the gross amount of new freight received by the respondent and cross-libelant as in said interlocutory decree referred to, and to deduct from the amount thereof the total amount of General Average expenses incurred (such General Average expenses having been determined by said interlocutory decree to be the sum of \$8,317.62); and to prorate the balance of the said new freight then remaining between the libelant and cross-respondent and the respondent and cross-libelant in proportion as the contributory value of the vessel in said interlocutory decree referred to (such contributory value having been determined by [85]

said interlocutory decree to be the sum of \$47,596.00) and cargo in said interlocutory decree referred to (having been determined by said interlocutory decree to be the sum of \$61,662.00) each bears to the whole contributory value. And said Commissioner, having on the 23rd day of April, 1938, duly filed his report herein, wherein and whereby he has found that the gross amount of new freight received by the respondent and cross-libelant is the sum of \$21,191.15, and that the balance of the said new freight remaining after the deduction of the General Average expense, as found by the interlocutory decree, is the sum of \$12,873.53; that on prorating the said balance of new freight the libelant and cross-respondent is entitled to the sum of \$7,199.18, and the respondent and cross-libelant is entitled to the sum of \$5,674.35. And the said respondent and cross-libelant having excepted to the said report of the said Commissioner, and the said exceptions having duly come on for hearing on the 6th day of March, 1939, and having been thereupon submitted on briefs by the respective parties, and due deliberation having been had thereon, it is ordered that the said exceptions be and the same hereby are in all things overruled, and the report of the said Commissioner be and the same hereby is in all respects approved and confirmed:

Now, therefore, it is hereby ordered, adjudged and decreed that the respondent and cross-libelant is entitled to retain to itself out of the balance

of new freight collected by it the sum of \$5,674.35, and that the libelant and cross-respondent St. Paul Fire & Marine Insurance Co., a corporation, do have and recover from the said respondent and cross-libelant Pacific Freighters Company, a corporation, the sum of \$7,199.18, together with interest and costs to be taxed, and that the said libelant and cross-respondent have execution therefor.

And it is further ordered that if this decree be not [86] satisfied within ten days after the entry thereof and notice to the proctors for respondent and cross-libelant, then R. H. Holmberg, surety on the cost bond posted by said respondent and cross-libelant, shall cause the engagements of his stipulations to be performed or show cause within four days why execution should not issue against him, and if no cause be shown within said limit of time, that a summary decree be rendered and entered against said surety and execution issue against him.

March 28, 1939

A. F. ST. SURE

District Judge.

Approved as to form as provided by Rule 22.

Proctors for Respondent and
Cross-Libelant.

Entered in Vol. 31 Judg. and Decrees at Page
321-322.

[Endorsed]: Admission of service. Filed Mar. 28,
1939. [87]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable A. F. St. Sure, Judge of the
United States District Court for the Northern
District of California:

Pacific Freighters Company, a corporation, respondent and cross-libelant in the above entitled cause, considering itself aggrieved by the final decree made and entered herein on the 28th day of March, 1939, hereby petitions for the allowance of an appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit. Petitioner prays that its appeal be allowed; that the amount of the cost bond to be given by it be fixed; that a citation issue; and that a transcript of record be sent to the appellate court.

Dated: May 29, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Respondent and Cross-
Libelant [88]

ORDER ALLOWING APPEAL

The above and hereunto attached petition is hereby granted and the appeal is allowed as prayed. Bond for costs is hereby fixed in the sum of two hundred fifty dollars (\$250). It is further ordered

that a citation issue; and that a transcript of record be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: May 29, 1939.

A. F. ST. SURE

United States District Judge

Receipt of a copy of the within Petition for Appeal and Order Allowing Appeal is admitted this 29 day of May, 1939.

IRVING H. FRANK

NATHAN H. FRANK &

IRVING H. FRANK

Proctors for Libelant and
Cross-Respondent

[Endorsed] Filed May 29, 1939. [89]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now Pacific Freighters Company, a corporation, respondent and cross-libelant in the above entitled cause, and assigns the following errors in the record and proceedings in the said cause, to wit:

I.

The district court erred in finding and decreeing in its interlocutory decree, dated July 19, 1928, that the question of law propounded in the stipulation for submission of cause herein, to wit,

“Is the said vessel and her said remaining original cargo entitled to be credited pro rata for such extra freight received by said vessel and her owners at the port of distress as the result of the substitution of the new cargo for that portion of the cargo which had been jettisoned?”

should be answered in the affirmative.

II.

The district court erred in rendering and entering its final decree herein dated March 28, 1939, on the basis of its [90] finding in its interlocutory decree herein dated July 19, 1928, that the question of law propounded in the stipulation for submission of cause, to wit,

“Is the said vessel and her said remaining original cargo entitled to be credited pro rata for such extra freight received by said vessel and her owners at the port of distress as the result of the substitution of the new cargo for that portion of the cargo which had been jettisoned?”

should be answered in the affirmative.

III.

The district court erred in failing and refusing to hold and decree that respondent and cross-libellant, as owner of the Schooner “Rosamond,” is entitled to retain the entire amount of freight re-

ceived by said vessel for the new deck cargo loaded at the port of distress.

IV.

The district court erred in failing and refusing to hold and decree that libelant and cross-respondent is not entitled to any part of the freight received by the Schooner "Rosamond" for the new deck cargo loaded at the port of distress.

V.

The district court erred in decreeing that the gross amount of freight received by the Schooner "Rosamond" and her owners for the new deck cargo loaded at the port of distress should be prorated, after deduction of general average expenses, between the vessel and her remaining original cargo in proportion as the contributory value of the vessel and the cargo each bears to the whole contributory value.

VI.

The district court erred in decreeing that the gross amount of freight received by the Schooner "Rosamond" for the new deck cargo loaded at the port of distress should be prorated, after deduction of general average expenses, between the vessel [91] and her remaining original cargo in proportion as the contributory value of the vessel and the cargo each bears to the whole contributory value, said decree being erroneous for the reason that respondent and cross-libelant, as owner of

said vessel, is entitled to retain the entire amount of said freight.

VII.

The district court erred in decreeing that the gross amount of freight received by the Schooner "Rosamond" for the new deck cargo loaded at the port of distress should be prorated, after deduction of general average expenses, between the vessel and her remaining original cargo in proportion as the contributory value of the vessel and the cargo each bears to the whole contributory value, said decree being erroneous for the reason that it is contrary to the charter party (Exhibit "A" to the Stipulation for Submission of Cause herein) and the bills of lading (Exhibit "B" to the Stipulation for Submission of Cause herein) governing the shipment involved herein. *

VIII.

The district court erred in decreeing that the gross amount of freight received by the Schooner "Rosamond" for the new deck cargo loaded at the port of distress should be prorated, after deduction of general average expenses, between the vessel and her remaining original cargo in proportion as the contributory value of the vessel and the cargo each bears to the whole contributory value, said decree being erroneous for the reason that it is contrary to the Statement of General Average (Exhibit "D" to the Stipulation for Submission

of Cause herein) which, by virtue of the Average Agreement (Exhibit "C" to the Stipulation for Submission of Cause herein), was and is binding on both parties hereto.

IX.

The district court erred in decreeing that the gross [92] amount of freight received by the Schooner "Rosamond" for the new deck cargo loaded at the port of distress should be prorated, after deduction of general average expenses, between the vessel and her remaining original cargo in proportion as the contributory value of the vessel and the cargo each bears to the whole contributory value, said decree being erroneous for the reason that even if libelant and cross-respondent is entitled to a share of the freight received by said vessel for said cargo, it is entitled to a pro rata share only of the net freight.

X.

The district court erred in rendering and entering the final decree herein dated March 28, 1939.

XI.

The district court erred in rendering the interlocutory decree herein dated July 19, 1928.

XII.

The district court erred in not dismissing the libel herein with costs as prayed in the answer

of respondent and cross-libelant and in not granting to respondent and cross-libelant a decree of dismissal with its costs herein, as prayed.

XIII.

The district court erred in not decreeing to respondent and cross-libelant the payment of the general average contribution of \$4,674.22 with interest and costs, as prayed in the cross-libel herein.

Wherefore, respondent and cross-libelant prays that the decree of the district court be reversed, and for such other and further relief as to the court may seem just and proper.

Dated: May 29, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Respondent and Cross-
Libelant. [93]

Receipt of a copy of the within Assignment of Errors is admitted this 29 day of May, 1939.

IRVING H. FRANK
NATHAN H. FRANK &
IRVING H. FRANK

Proctors for Libelant and
Cross-Respondent

[Endorsed] Filed May 29 1939. [94]

Pacific Indemnity Company

Los Angeles

San Francisco

Pacific Finance Bldg.

100 Sansome Street

Lee A. Phillips, Chairman of the Board

M. R. Johnson, President

[Title of District Court and Cause.]

BOND ON APPEAL

Know all men by these presents:

That we, Pacific Freighters Company, a corporation, respondent and cross-libelant above named, as Principal, and Pacific Indemnity Company, a corporation organized and existing under the laws of the State of California, as Surety, are held and firmly bound unto St. Paul Fire & Marine Insurance Company, a corporation, libelant and cross-respondent above named, in the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, lawful money of the United States of America, to be paid unto said libelant and cross-respondent, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our respective successors, jointly and severally, firmly by these presents.

Signed, sealed and dated this 4th day of May, 1939.

Whereas, the above named respondent and cross-libelant has appealed or is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree of the United States District Court for the Northern District of Cali-

fornia, Southern Division, made and entered herein on the 28th day of March, 1939;

Now, therefore, the condition of this obligation is such that if said Pacific Freighters Company, a corporation, shall prosecute said appeal to effect, and pay all costs that may be awarded against it if the appeal is not sustained, then this obligation to be void; otherwise the same to be and remain in full force and effect.

It is further expressly understood and agreed that in case of a breach of any condition of the above obligation, the court in the above entitled cause may, upon notice to the Pacific Indemnity Company of not less than ten days, proceed summarily in the said cause to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

PACIFIC FREIGHTERS COMPANY

[Seal]

By R. H. HOLMBERG
Secretary

PACIFIC INDEMNITY COMPANY

[Seal]

By R. R. POULTON,
Attorney-in-Fact

State of California,

City and County of San Francisco—ss.

On this 4th day of May in the year one thousand nine hundred and thirty-nine, before me, Emily K. McCorry a Notary Public in and for said County and State, residing therein, duly commissioned and

sworn, personally appeared, R. R. Poulton known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said R. R. Poulton acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] EMILY K. McCORRY

Notary Public in and for the
City and County of San
Francisco, State of Cali-
fornia

My Commission expires December 30, 1942 [95]

State of California,
City and County of San Francisco—ss.

On this 29th day of May, in the year one thousand nine hundred and thirty-nine before me, Mary J. Creech, a notary public in and for said city and county and state, residing therein, duly commissioned and sworn, personally appeared R. H. Holmberg, known to me to be the Secretary of Pacific Freighters Company, the corporation, described in and that executed the within instrument,

and also known to me to be the person who executed it on behalf of the said corporation therein named, and he acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county and state aforesaid the day and year in this certificate first above written.

MARY J. CREECH

Notary Public in and for said
City and County of San
Francisco, State of Califor-
nia.

My Commission expires May 25, 1941. [96]

Receipt of a copy of the above and hereunto attached bond on appeal is hereby admitted this 29 day of May, 1939, and said bond is approved as to form, amount, and surety.

IRVING H. FRANK

NATHAN H. FRANK &

IRVING H. FRANK

Proctors for Libelant and
Cross-Respondent

The above and hereunto attached bond on appeal is hereby approved.

Dated: May 29, 1939.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed May 29, 1939. [97]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To St. Paul Fire & Marine Insurance Co., a corporation, libelant and cross-respondent in the above entitled cause, and to Irving H. Frank, Esq., and Messrs. Nathan H. Frank & Irving H. Frank, proctors for said libelant and cross-respondent:

You and each of you will please take notice that Pacific Freighters Company, a corporation, respondent and cross-libelant in the above entitled cause, appeals from the final decree made and entered in said cause on the 28th day of March, 1939, to the United States Circuit Court of Appeals for the Ninth Circuit, and that said appeal was allowed by the Honorable A. F. St. Sure, Judge of the above entitled court, on May 29, 1939.

Dated: May 29, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Respondent and Cross-
Libelant

Receipt of a copy of the within Notice of Appeal is admitted this 29 day of May, 1939.

IRVING H. FRANK
NATHAN H. FRANK &
IRVING H. FRANK

Proctors for Libelant and
Cross-Respondent

[Endorsed]: Filed May 31, 1939. [98]

[Title of District Court and Cause.]

STIPULATION REGARDING EXHIBITS

It is hereby stipulated by and between the parties hereto that Exhibit "A" to the Answers to Interrogatories Annexed to the Answer to Cross-Libel and Exhibit "D" to the Stipulation for Submission of Cause, instead of being copied in the apostles on appeal herein, may be sent with said apostles to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits.

Dated: June 22, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Appellant

IRVING H. FRANK

NATHAN H. FRANK &

IRVING H. FRANK

Proctors for Appellee

[Endorsed]: Filed Jun. 24, 1939. [99]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF ORIGINAL
EXHIBITS

Good cause therefor appearing, and the parties to the above entitled cause having so stipulated,

It is ordered that Exhibit "A" to the Answers to Interrogatories Annexed to the Answer to Cross-

Libel, and Exhibit "D" to the stipulation for Submission of Cause, shall, instead of being copied in the apostles on appeal herein, be sent with said apostles to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits.

Dated: June 24, 1939.

A. F. ST. SURE

United States District Judge

Approved as to form.

IRVING H. FRANK

NATHAN H. FRANK &

IRVING H. FRANK

Proctors for Appellee

[Endorsed]: Filed Jun. 24, 1939. [100]

[Title of District Court and Cause.]

APPELLANT'S PRAECIPE FOR APOSTLES
ON APPEAL

To the Clerk of the above entitled Court:

Please prepare apostles on appeal in the above entitled cause to contain the following:

1. The libel, filed on or about July 13, 1921.
2. The answer, with exhibits annexed thereto, filed on or about September 2, 1921.
3. The cross-libel, with exhibit thereto annexed, filed on or about September 2, 1921.

4. Exceptions of libelant to answer of respondent Pacific Freighters Company, filed on or about May 15, 1922.

5. Notice of motion to strike out portions of answer to libel of Pacific Freighters Company, filed on or about May 15, 1922.

6. Exceptions of libelant to cross-libel of Pacific Freighters Company, filed on or about May 15, 1922.

7. Notice of motion to strike out portions of cross-libel of Pacific Freighters Company, filed on or about May 15, 1922.

8. Order of October 5, 1923, overruling exceptions to answer and cross-libel and denying the motions to strike out parts thereof. [101]

9. The answer to cross-libel, with interrogatories thereto annexed, filed on or about May 29, 1924.

10. The answers to interrogatories annexed to the answer to cross-libel, with exhibits thereto annexed, filed on or about June 20, 1924.

11. The stipulation for submission of cause, with exhibits thereto annexed, filed on or about January 22, 1925.

12. The interlocutory decree, filed on or about July 19, 1928.

13. St. Paul's Exhibits 2 and 3, December 1, 1937, attached to testimony taken before Ernest E. Williams, United States Commissioner.

14. The report of United States Commissioner Ernest E. Williams, filed on or about April 23, 1938.
15. The final decree, filed on or about March 28, 1939.
16. Petition for appeal and order allowing appeal.
17. Assignment of errors.
18. Citation on appeal.
19. Bond on appeal.
20. Notice of appeal.
21. Stipulation regarding exhibits.
22. Order for Transmittal of Original Exhibits.
23. This praecipe and attached stipulation for omissions from apostles on appeal.

Dated: June 22, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Respondent and
Cross-Libelant [102]

STIPULATION FOR OMISSIONS FROM
APOSTLES ON APPEAL

It is hereby stipulated by and between the parties hereto that all testimony and documents in the above entitled cause, other than those designated in the foregoing praecipe, are immaterial to a consideration of the errors assigned on the appeal

herein, and may be omitted from the apostles on appeal.

Dated: June 22, 1939.

PILLSBURY, MADISON & SUTRO
FELIX T. SMITH

Proctors for Appellant
IRVING H. FRANK

NATHAN H. FRANK &
IRVING H. FRANK

Proctors for Appellee

[Endorsed]: Filed Jun. 24, 1939. [103]

[Title of District Court and Cause.]

ORDER ENLARGING TIME TO FILE
APOSTLES ON APPEAL

Good cause therefor appearing, it is hereby ordered that the time for filing the apostles on appeal herein and docketing the cause on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and it hereby is, extended to and including July 28, 1939.

Dated: June 24, 1939.

A. F. ST. SURE

United States District Judge

Approved as to form.
IRVING H. FRANK
NATHAN H. FRANK &
IRVING H. FRANK
Proctors for Appellee

[Endorsed]: Filed Jun. 26, 1939. [104]

[Title of District Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 104 pages, numbered from 1 to 104, inclusive, contain a full, true, and correct transcript of the records and proceedings in the cause entitled *St. Paul Fire & Marine Ins. Co. vs. Pacific Freighters Company No. 17274-S*, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$10.65 and that the said amount has been paid to me by the Attorneys for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of July A. D. 1939.

[Seal]

WALTER B. MALING

Clerk.

J. P. WELSH

Deputy Clerk. [105]

[Title of District Court and Cause.]

CITATION ON APPEAL

United States of America,—ss:

The President of the United States of America
To St. Paul Fire & Marine Insurance Co., a corporation, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Pacific Freighters Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. F. St. Sure, United States District Judge for the Northern District of California this 29th day of May, A. D. 1939

A. F. ST. SURE

United States District Judge.

Receipt of a copy of the above Citation is admitted this 29 day of May, 1939.

IRVING H. FRANK

NATHAN H. FRANK &

IRVING H. FRANK

Proctors for Libelant and
Cross-Respondent, St. Paul
Fire & Marine Insurance
Co.

[Endorsed]: Filed May 31, 1939. [106]

[Endorsed]: No. 9244. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Freighters Company, a Corporation, Appellant, vs. St. Paul Fire and Marine Insurance Company, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed, July 27, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 9244

PACIFIC FREIGHTERS COMPANY, a corpo-
ration,

Appellant,

vs.

ST. PAUL FIRE & MARINE INSURANCE CO.,
a corporation,

Appellee.

CONCISE STATEMENT OF THE POINTS ON
WHICH APPELLANT INTENDS TO RELY
ON THE APPEAL

and

DESIGNATION OF THE PARTS OF THE
RECORD NECESSARY FOR THE CONSID-
ERATION THEREOF

Appellant, Pacific Freighters Company, hereby adopts, as the points upon which it intends to rely on the appeal herein, its thirteen assignments of error filed herein.

Appellant designates, as the record necessary for the consideration of the foregoing points, the entire transcript of record as certified to the above entitled court, together with the original exhibits; and, pursuant to the order dated July 27, 1939, appellant designates for printing the entire tran-

script of record as certified to the above entitled court, and the following pages of "Exhibit D" to the Stipulation for Submission of Cause, an original exhibit: the title page, pages 1-17, inclusive, and pages 156-167, inclusive.

Dated: July 27, 1939.

FELIX T. SMITH
FRANCIS R. KIRKHAM
PILLSBURY, MADISON & SUTRO
Proctors for Appellant

Receipt of a copy of the foregoing statement of points and designation of record is hereby admitted this 27th day of July, 1939.

IRVING H. FRANK
NATHAN H. FRANK &
IRVING H. FRANK
Proctors for Appellee

[Endorsed]: Filed July 27, 1939. Paul P. O'Brien.

EXCERPT FROM PROCEEDINGS OF MON-
DAY, JULY 31, 1939.

Before: Denman, Mathews and Healy, Circuit
Judges.

No. 9244

[Title of Cause.]

ORDER WAIVING PRINTING OF PORTION
OF EXHIBITS

The motion of appellant for an order waiving printing of a portion of original exhibits in this cause coming on regularly for hearing, and it appearing therefrom that appellee consents to entry of order as requested, and Mr. Francis R. Kirkham, counsel for appellant appearing in support of said motion, and good cause therefor appearing, it is ordered that "Exhibit A" to the Answers to Interrogatories Annexed to the Answer to Cross-Libel, and pages 18-155, inclusive, of "Exhibit D" to the Stipulation for Submission of Cause, need not be printed, and that said exhibits shall constitute a part of the record on the appeal herein; and

It is further ordered that in printing the record herein, the clerk of this court shall substitute for said "Exhibit A" the following statement:

"[Clerk's note: Exhibit A to the Answers to Interrogatories Annexed to the Answer to Cross-Libel (being the Statement of General Average) is identical with Exhibit D to the Stipulation for Submission of Cause herein.]"

and shall substitute for pages 18-155, inclusive, of "Exhibit D" to the Stipulation for Submission of Cause, the following statement:

"[Clerk's note: The first 138 pages of items under the above heading, "Charges and Expenses" (being pages 18-155, inclusive, of the Statement of General Average), are omitted from the printed record pursuant to the order of the court dated July 31, 1939.]"

